

# *Doing Business Guide Kazakhstan*

1 October 2012



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## ***APPENDICES***

Please see Appendices A through D for key facts and tax and legal information. Appendix E contains a list of defined terms used in this Guide.

## TABLE OF CONTENTS

|                                                                   |           |
|-------------------------------------------------------------------|-----------|
| <b>1 KAZAKHSTAN – A PROFILE .....</b>                             | <b>5</b>  |
| 1.1 Government Structure .....                                    | 5         |
| <i>Politics</i> .....                                             | 5         |
| <i>The President</i> .....                                        | 5         |
| <i>National Government</i> .....                                  | 6         |
| <i>Local Government</i> .....                                     | 7         |
| <i>The Parliament</i> .....                                       | 7         |
| <i>Courts</i> .....                                               | 8         |
| <i>Supreme Court</i> .....                                        | 9         |
| <i>Local Courts</i> .....                                         | 9         |
| <i>Constitutional Council</i> .....                               | 10        |
| 1.2 Legal System .....                                            | 11        |
| <i>Legislative Framework</i> .....                                | 11        |
| <i>Hierarchy of the normative legal acts of Kazakhstan</i> .....  | 11        |
| <i>International Agreements</i> .....                             | 12        |
| 1.3 People .....                                                  | 13        |
| <i>Population</i> .....                                           | 13        |
| <i>Language</i> .....                                             | 13        |
| 1.4 Economy .....                                                 | 14        |
| <i>General Overview</i> .....                                     | 14        |
| <i>Transportation</i> .....                                       | 15        |
| <i>Telecommunications</i> .....                                   | 17        |
| 1.5 Foreign Trade .....                                           | 17        |
| 1.6 Key Statistics .....                                          | 17        |
| <b>2 BUSINESS ENTITIES .....</b>                                  | <b>18</b> |
| 2.1 Legal Framework .....                                         | 18        |
| 2.2 Joint Stock Company .....                                     | 18        |
| 2.3 Economic Partnerships .....                                   | 19        |
| <i>Limited Liability Partnerships</i> .....                       | 19        |
| 2.4 Branches and Representative Offices .....                     | 19        |
| 2.5 Branch Versus Subsidiary .....                                | 20        |
| 2.6 Consortium .....                                              | 20        |
| 2.7 Registration Process .....                                    | 21        |
| 2.8 Minimal charter capital .....                                 | 21        |
| 2.9 Taxation of Business Entities .....                           | 23        |
| <b>3 FOREIGN INVESTMENT .....</b>                                 | <b>24</b> |
| 3.1 General Overview .....                                        | 24        |
| 3.2 Free Trade Zones .....                                        | 26        |
| <b>4 FOREIGN CURRENCY MARKET AND FOREIGN CURRENCY RULES .....</b> | <b>27</b> |

## ***Doing Business Guide dated 1 October 2012***

|                                                                                             |           |
|---------------------------------------------------------------------------------------------|-----------|
| <b>5 BANKING AND FINANCE .....</b>                                                          | <b>29</b> |
| 5.1 Banking System .....                                                                    | 29        |
| 5.2 Capital Markets .....                                                                   | 31        |
| <b>6 LABOUR RELATIONS AND SOCIAL SECURITY .....</b>                                         | <b>33</b> |
| 6.1 Labor Relations .....                                                                   | 33        |
| 6.2 Working Conditions .....                                                                | 34        |
| 6.3 Social Security System .....                                                            | 34        |
| 6.4 Foreign Personnel.....                                                                  | 34        |
| 6.5 Secondment .....                                                                        | 35        |
| <b>7 OIL AND GAS .....</b>                                                                  | <b>37</b> |
| 7.1 Legal Regime .....                                                                      | 37        |
| 7.2 Subsurface Use Contracts .....                                                          | 38        |
| 7.3 Transfer Restrictions .....                                                             | 39        |
| 7.4 Participation of the Republic of Kazakhstan in the oil and gas and mining sectors ..... | 39        |
| 7.5 Local Content.....                                                                      | 40        |
| 7.6 Procurement Requirements .....                                                          | 41        |
| <b>8 REAL ESTATE AND AGRICULTURE .....</b>                                                  | <b>42</b> |
| 8.1 Immovable property .....                                                                | 42        |
| 8.2 Ownership restrictions in respect of agricultural land plots for foreigners .....       | 43        |
| 8.3 Regulations on grants .....                                                             | 44        |
| <b>9 OTHER REGULATORY MATTERS .....</b>                                                     | <b>45</b> |
| 9.1 Antitrust Regulation .....                                                              | 45        |
| 9.2 Consents.....                                                                           | 46        |
| <i>Strategic assets</i> .....                                                               | 46        |
| <i>Telecommunications</i> .....                                                             | 46        |
| 9.3 Intellectual Property .....                                                             | 47        |
| 9.4 Consumer Protection .....                                                               | 47        |
| <b>10 IMPORTING AND EXPORTING .....</b>                                                     | <b>49</b> |
| 10.1 Trends in Customs Policy.....                                                          | 49        |
| 10.2 Import Restrictions .....                                                              | 49        |
| 10.3 Customs Duties .....                                                                   | 50        |
| 10.4 Temporary Import Relief.....                                                           | 52        |
| 10.5 Import VAT Incentives.....                                                             | 53        |
| 10.6 Documentation and Procedures .....                                                     | 54        |
| 10.7 Warehousing and Storage.....                                                           | 54        |
| 10.8 Re-Exports .....                                                                       | 55        |
| <b>11 ACCOUNTING AND AUDITING REQUIREMENTS .....</b>                                        | <b>56</b> |
| 11.1 Accounting .....                                                                       | 56        |
| 11.2 Audit Requirements .....                                                               | 58        |
| <b>12 TAX SYSTEM AND ADMINISTRATION .....</b>                                               | <b>59</b> |

## **Doing Business Guide dated 1 October 2012**

|                                                                |           |
|----------------------------------------------------------------|-----------|
| 12.1 Tax System.....                                           | 59        |
| 12.2 Direct and Indirect Tax Burden .....                      | 59        |
| 12.3 Principal Taxes .....                                     | 59        |
| 12.4 Legislative Framework .....                               | 60        |
| 12.5 Income Tax.....                                           | 60        |
| <i>Concepts of Income Tax</i> .....                            | 60        |
| <i>Classes of Taxpayer</i> .....                               | 61        |
| <i>Taxable Income</i> .....                                    | 61        |
| 12.6 Income received in countries with favorable taxation..... | 61        |
| 12.7 Tax Treaties .....                                        | 62        |
| 12.8 Tax Returns and Payments .....                            | 62        |
| 12.9 Assessments .....                                         | 62        |
| 12.10 Appeals .....                                            | 62        |
| 12.11 Withholding Taxes.....                                   | 63        |
| <b>13 TAXATION OF CORPORATIONS.....</b>                        | <b>65</b> |
| 13.1 Corporate Tax System.....                                 | 65        |
| 13.2 Incentives .....                                          | 65        |
| 13.3 Taxable Income .....                                      | 66        |
| 13.4 Deductibility of Expenses .....                           | 66        |
| 13.5 Related Party Transactions.....                           | 68        |
| 13.6 Foreign Exchange .....                                    | 69        |
| 13.7 Tax Computations .....                                    | 69        |
| 13.8 Other Taxes.....                                          | 69        |
| 13.9 Taxation of Business Entities .....                       | 71        |
| 13.10 Holding Companies .....                                  | 71        |
| 13.11 Subsurface Taxation .....                                | 71        |
| <i>Tax Regime</i> .....                                        | 71        |
| <i>Special Taxes</i> .....                                     | 71        |
| <i>Mineral Production Tax</i> .....                            | 72        |
| <i>Excess Profits Tax</i> .....                                | 72        |
| <i>Rent Tax</i> .....                                          | 72        |
| <i>Special Provisions</i> .....                                | 73        |
| <i>Deductions</i> .....                                        | 73        |
| <i>Losses</i> .....                                            | 73        |
| <i>Ring Fencing</i> .....                                      | 74        |
| <i>Stability of Tax Regime</i> .....                           | 74        |
| <b>14 TAXATION OF INDIVIDUALS .....</b>                        | <b>75</b> |
| 14.1 Individual Income Tax.....                                | 75        |
| <i>Taxpayers</i> .....                                         | 75        |
| <i>Objects of Taxation</i> .....                               | 75        |
| <i>Scope of Taxation</i> .....                                 | 76        |

## **Doing Business Guide dated 1 October 2012**

|                                                                   |            |
|-------------------------------------------------------------------|------------|
| <i>Tax Rates</i> .....                                            | 76         |
| <i>Tax Residents</i> .....                                        | 76         |
| <i>Double Tax Treaties</i> .....                                  | 77         |
| <i>Other exceptions for non-resident individuals</i> .....        | 77         |
| <i>Income received in countries with favorable taxation</i> ..... | 77         |
| 14.2 Employment income .....                                      | 77         |
| <i>Employee's gross income</i> .....                              | 77         |
| <i>Deductions</i> .....                                           | 78         |
| <i>Business Deductions</i> .....                                  | 78         |
| 14.3 Personal income .....                                        | 78         |
| <i>Interest</i> .....                                             | 78         |
| <i>Dividends</i> .....                                            | 79         |
| <i>Capital gains</i> .....                                        | 79         |
| <i>Rental income</i> .....                                        | 80         |
| <i>Sale of property</i> .....                                     | 80         |
| 14.4 Other Taxes .....                                            | 80         |
| <i>Social Tax</i> .....                                           | 80         |
| <i>Social Security Taxes</i> .....                                | 80         |
| <i>Obligatory Pension Contributions</i> .....                     | 81         |
| <i>Wealth Tax</i> .....                                           | 81         |
| <i>Local Taxes</i> .....                                          | 81         |
| 14.5 Tax Administration .....                                     | 81         |
| <i>Tax Reporting</i> .....                                        | 81         |
| <i>Payment of Tax</i> .....                                       | 81         |
| <i>Foreign Tax Credits</i> .....                                  | 82         |
| 14.6 Secondment .....                                             | 82         |
| <b>15 VALUE ADDED TAX (VAT)</b> .....                             | <b>83</b>  |
| 15.1 Introduction .....                                           | 83         |
| 15.2 Scope of VAT.....                                            | 83         |
| 15.3 Zero-Rating .....                                            | 85         |
| 15.4 Exempt Supplies.....                                         | 86         |
| 15.5 Taxable Amount .....                                         | 86         |
| 15.6 Non-Deductible Input VAT .....                               | 87         |
| 15.7 VAT Incentives.....                                          | 87         |
| 15.8 VAT Compliance .....                                         | 88         |
| <b>APPENDIX A</b> .....                                           | <b>89</b>  |
| <b>APPENDIX B</b> .....                                           | <b>90</b>  |
| <b>APPENDIX C</b> .....                                           | <b>91</b>  |
| <b>APPENDIX D</b> .....                                           | <b>94</b>  |
| <b>APPENDIX E</b> .....                                           | <b>100</b> |

## ***1 KAZAKHSTAN – A PROFILE***

### ***1.1 Government Structure***

#### ***Politics***

Kazakhstan's government structure is based on the three-branch system, with executive, legislative and judicial branches.

Though Kazakhstan passed a new constitution as an independent state in January 1993, a second, and currently effective, constitution was passed by national referendum in August 1995.

In December 1997 the capital of Kazakhstan was moved from Almaty to Akmola, now renamed to Astana, by presidential decree and was officially opened on 10 June 1998.

#### ***The President***

The Presidency is the highest executive authority in Kazakhstan. Nursultan Nazarbayev has led Kazakhstan since 22 June 1989 initially as the First Secretary of the Communist Party of the Kazakh SSR. Since the establishment of the presidential post on 24 April 1990, Nursultan Nazarbaev has been the President of Kazakhstan, winning successive re-elections.

The President of the Republic of Kazakhstan as the head of state determines the main directions of the domestic and foreign policy of the state and represents the Republic of Kazakhstan within the country and in international relations. He oversees international negotiations and signs international agreements.

The President appoints a Prime Minister with the consent of the Majilis (lower house of the Parliament); determines the structure of the Government; appoints the members of the Government; forms, abolishes and reorganizes the central executive bodies which are not included into the Government; and appoints the ministers of foreign affairs, defense, internal affairs and justice.

Additionally the President appoints the Chairperson of the National Bank, the General Procurator and the Chairperson of the National Security Committee of the Republic of Kazakhstan, heads of diplomatic representative offices of the Republic of Kazakhstan, the Chairperson and two members of the Central Election Committee, the Chairperson and two members of the Accounts Committee for Control over Execution of the Republican Budget and the State Secretary of the Republic of Kazakhstan.

The President signs laws of the Republic and can return a law to Parliament for its re-consideration. Should the Parliament vote (by a two-thirds majority) to accept the law in its original form, the President is obliged to sign it. If no objection is raised by the President within a one month period after the President's receipt of a proposed law approved by Parliament, the law is deemed passed.

### ***National Government***

The Government of the Republic of Kazakhstan is the main executive authority which heads the system of executive bodies and administers their activities.

The Government is formed by the President of the Republic of Kazakhstan in accordance with the Constitution of the Republic of Kazakhstan and is directly accountable to the President. The Government issues regulations in line with existing legislation. It consists of the Prime Minister and his or her deputies, ministers and other key officials. The Prime Minister is responsible for the direct management of the Government and can sign resolutions or issue orders. Ministers decide on the structure of the ministries and agencies for which they are responsible.

The main functions of the Government of the Republic of Kazakhstan are: (i) developing and implementing the main directions of the country's socio-economic policy; (ii) presenting Parliament with a national budget and a report on the government's performance; (iii) introducing drafts of laws in the Majilis and ensuring enforcement of laws that Parliament passes; (iv) managing state property; (v) developing the Republic of Kazakhstan's foreign policy; (vi) managing the activity of ministries, state committees and other central bodies as

## ***Doing Business Guide dated 1 October 2012***

well as regional and local executive bodies; and (vii) performing other functions assigned to it by the Constitution, laws and presidential decrees.

### ***Local Government***

Kazakhstan is divided into 14 administrative regions (oblasts) and two cities of special status – Astana (the capital) and Almaty (city of Republican significance). Local public administration is represented by local representative (oblast, rayon and city maslikhats) and executive (oblast, rayon and city akimats and rural akims) bodies, which are responsible for management of the respective territory.

The head of the regional executive body, the Akim, is directly chosen by the President and serves as the representative of the President at the local level. The Akim's power is terminated when a newly-elected President of the Republic is inaugurated, though the existing Akim will continue to perform his or her duties until the new President appoints a new Akim.

Maslikhats as local legislative bodies express the will of the inhabitants in the respective administrative-territorial units with due consideration of national interests, determine measures for its implementation and control realization.

### ***The Parliament***

A new Parliament consisting of two chambers was organized on the basis of the Constitution dated 30 August 1995.

The Parliament is the supreme legislative body of Kazakhstan. The Parliament consists of two Chambers acting on a permanent basis: the Senate and the Majilis.

The Senate is formed by the deputies elected as two persons from each region and cities of special status of the Republic of Kazakhstan. Fifteen deputies are appointed by the President. The term of the Senate deputies is six years.

The Majilis consists of one hundred and seven deputies. Ninety eight deputies are elected by proportional representation with 7% being the hurdle barrier, and

the remaining nine deputies are elected by the Assembly of the People of Kazakhstan<sup>1</sup>. The term of the Majilis deputies is five years.

A deputy of the Parliament may not be a member of both Chambers simultaneously.

The Parliament's role is to approve the Prime Minister and other key government positions nominated by the President. The Parliament is responsible for approving the Constitution and passing constitutional amendments, adopting laws and other legislation and exercising control over the implementation of legislation. The Parliament also ratifies international treaties.

The last parliamentary elections were held on 16 November 2011 (election of the Majilis deputies on the basis of the party lists) and on 16 January 2012 (election of the Majilis deputies by the Assembly of the People of Kazakhstan). Nur-Otan, a party led by Nursultan Nazarbayev, received about 81% of the vote (83 seats) and two parties DP Ak Zhol (7 seats) and Kazakhstan Communist People's Party (7 seats) also won seats in the Parliament by reaching the 7% threshold.

### ***Courts***

The court system of Kazakhstan includes the Supreme Court, local courts and other courts (administrative, military, economic, juvenile, etc.) established by law.

The Chairperson of the Supreme Court as well as judges of the Supreme Court are elected by the Senate of the Republic of Kazakhstan based on the nominations of the President.

Under Kazakhstan legislation the judges of local courts and other courts (administrative, military, economic, juvenile, etc.) and the Chairpersons of the Justice Collegiums of the Supreme Court, local courts and other courts are

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<sup>1</sup> The Assembly of the People of Kazakhstan was established in accordance with the President's decree on 1 March 1995 as a consultative-advisory body appointed and accountable directly to the President. The main aim of the Assembly of the People of Kazakhstan is ensuring inter-ethnic stability. Under the Law of the Republic of Kazakhstan dated 20 October 2008 No. 70-IV on Assembly of the People of Kazakhstan, Mr. Nursultan Nazarbayev, as the first president of Kazakhstan, is the life-long chairman of the assembly. Today the Assembly of the People of Kazakhstan consists of 350 members.

## ***Doing Business Guide dated 1 October 2012***

appointed by the President in accordance with recommendations of the Supreme Judicial Council<sup>2</sup>.

### ***Supreme Court***

The Supreme Court of the Republic of Kazakhstan is the highest court in the judicial system for civil, criminal and other cases, and it supervises activities of the local courts and provides clarifications on matters of judicial practice.

The Supreme Court bodies are:

- ✓ Collegium for Civil Cases;
- ✓ Collegium for Criminal Cases; and
- ✓ Plenary Session of the Court<sup>3</sup>.

The competence of the Supreme Court of the Republic of Kazakhstan encompasses (i) considering the court cases; (ii) studying the judicial practice; (iii) adoption of regulatory resolutions; and (iv) providing judicial practice explanations.

### ***Local Courts***

The local courts in the Republic of Kazakhstan are represented by:

- ✓ oblast courts and courts equivalent to them (the city courts of Astana and Almaty); and
- ✓ district courts and courts equivalent to them (city courts and interdistrict courts).

The district courts and courts equivalent to them are courts of first instance, which consider court cases and materials referred to their jurisdiction and other functions stipulated by the law. In practice 90% of cases are considered by the court of first instance. If the litigants disagree with the court decision, they can

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<sup>2</sup> The Supreme Judicial Council is an institution established in order to provide constitutional powers to the President of the Republic of Kazakhstan on formation of courts. Under the Law of the Republic of Kazakhstan dated 17 November 2008 No. 79-IV on Supreme Judicial Council, the Chairperson as well as other members of the council are appointed by the President.

<sup>3</sup> The Plenary Session of the Supreme Court is a meeting of no less than 2/3 of all judges of the Supreme Court. A Plenary Session typically held once a year to oversee court administration.

## ***Doing Business Guide dated 1 October 2012***

appeal the decision of the court of first instance to the oblast courts and courts equivalent to them.

The competency of the oblast court encompasses review of court cases and materials referred to its jurisdiction, examination of judicial practice, supervision activities of the administrator of the courts of the oblast as well as Astana and Almaty and other functions stipulated by the law.

The oblast court bodies are:

- ✓ Plenary session of the court;
- ✓ Appeal collegium; and
- ✓ Cassation collegium.

The appeal collegiums of oblast courts consider cases on the basis of appellate complaints (protests) against sentences which have not yet entered into legal force. The cassation collegiums verify the legitimacy of entered into force decisions for compliance with procedural norms.

### ***Constitutional Council***

The Constitutional Council is a state body which ensures supremacy of the Constitution over the whole territory of Kazakhstan. The Constitutional Council consists of seven members whose authorities last for six years. The Chairperson and two members of the Constitutional Council are appointed by the President. Two members are appointed by the Senate. The Majilis also appoints two members of the Constitutional Council. The ex-Presidents of the Republic of Kazakhstan have a right to be life-long members of the Constitutional Council.

The main function of the Constitutional Council is to provide official interpretation of the Constitution's provisions. The meeting of the Constitutional Council for provision of interpretation of the Constitution can be convened at the initiative of:

1. The President;
2. The Chairperson of the Senate;
3. The Chairperson of the Majilis;
4. The Prime-Minister;

5. 1/5 of total number of the Parliament's deputies.

## ***1.2 Legal System***

### ***Legislative Framework***

The legal system of Kazakhstan owes its origin to the Romano-Germanic (Continental) legal model. The main legal source of the Continental legal system is a legal act. The Continental legal system consists of a single hierarchically structured system of enacted law sources (i.e. legal acts, not judicial precedent).

### ***Hierarchy of the normative legal acts of Kazakhstan***

In Kazakhstan's legal system the authority of law depends on its hierarchical position. The Constitution has the highest juridical force and direct effect on the entire territory of the Republic Kazakhstan.

According to Sub-Clause 4.2 of the Law of the Republic of Kazakhstan dated 24 March 1998 No. 213 – I on Normative Legal Acts, the hierarchy of the normative legal acts of Kazakhstan is the following:

- The Constitution of Kazakhstan;
- Laws, making amendments and additions to the Constitution;
- Constitutional laws of Kazakhstan and Edicts of the President of Kazakhstan having the force of constitutional laws<sup>4</sup>;
- Codes of the Republic of Kazakhstan;
- Laws of Kazakhstan as well as Edicts of the President of Kazakhstan having the force of laws<sup>5</sup>;
- Regulatory decrees of the Parliament of the Republic of Kazakhstan<sup>6</sup>;
- Regulatory edicts of the President of the Republic of Kazakhstan;
- Regulatory decrees of the Government of the Republic of Kazakhstan;

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<sup>4</sup> Under Sub-Clause 53.3 of the Constitution of the Republic of Kazakhstan, the Parliament by 2/3 of deputies' votes may delegate its legislative functions to the President for a period not exceeding one year.

<sup>5</sup> Under Sub-Clause 61.2 of the Constitution of the Republic of Kazakhstan, the President has the authority to determine the priority of draft laws for consideration by the Parliament. If requested by the President, the Parliament must review the draft within a month after receiving the draft. If the Parliament fails to do so, the President may adopt an edict having the force of law which will be effective until the Parliament adopts a law in relation to the issue.

<sup>6</sup> The concept of regulatory decrees of the Parliament is not clearly defined and appears to encompass the issuance of regulatory and procedural norms for implementing legislation. These decrees are little used in practice.

## ***Doing Business Guide dated 1 October 2012***

- Edicts of the ministers of the Republic of Kazakhstan and other central state bodies; Central Election Committee and the Accounts Committee for Control over Execution of the Republican Budget;
- Regulatory legal decisions of maslikhats (local representative bodies), regulatory legal resolutions of akimats (local executive bodies), regulatory legal decisions of akims (the heads of local executive bodies).

Each of the normative legal acts of the lower level must not contradict the normative legal acts of the higher level. According to Sub-Clause 4.3 of the Constitution of the Republic of Kazakhstan, international treaties ratified by the Republic of Kazakhstan typically have priority over its domestic laws and are directly implemented except in cases when the application of an international treaty requires the promulgation of a law.

The regulatory decrees of the Constitutional Council of the Republic of Kazakhstan and of the Supreme Court of the Republic of Kazakhstan are not within the scope of the abovementioned hierarchy. Under Kazakhstan legislation the Constitutional Council is authorized to provide official interpretations of the Constitution, and other legislative acts must not contradict to its regulatory decrees. The Supreme Court has authority to explain provisions of normative legal acts during its judicial practice to lower instance courts.

### ***International Agreements***

After gaining independence in 1991, Kazakhstan started active work on becoming a member of international organizations and a participating state of major treaties. Nowadays, the Republic is a member of various international and regional organizations. It has signed and ratified a number of treaties and agreements in a wide range of public relations.

The dissolution of the Soviet Union was followed by signing an Agreement on the formation of the Commonwealth of Independent States (the “**CIS**”). Notably, the Agreement on the purposes and main principles of the CIS was signed on 21 December 1991 in Almaty, and Kazakhstan became a member state three days later, on 24 December. Up to today, the state possesses rights and obligations due to participation in the main economic, political, military, ecological, cultural and other treaties within the CIS.

## ***Doing Business Guide dated 1 October 2012***

On 2 March 1992 Kazakhstan joined the United Nations Organization and became a participant of a number of basic international conventions – the Treaty on Civil and Political Rights (New York, 1966) and the Treaty on Economic, Social and Cultural Rights (New York, 1966). Recently, it has promised to implement the rule of law at all levels when it agreed on the UN Declaration on the rule of law in September 2012. Kazakhstan is also a member of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958, the Hague Convention Abolishing the Requirement of Legalization of Foreign Public Documents of 5 October 1961, and the United Nations Convention Against Corruption dated 31 October 2003.

On 6 October 2007 Kazakhstan, Russia and Belarus signed a treaty on the establishment of a Customs Union with a common customs territory. 6 July 2010 is the date of the official start of the functioning of the Customs Union as the Customs Code of the Customs Union was implemented into national legislation of all participating states. Countries agreed on incentives and other measures such as import/export with 0% VAT rate on export of goods, encouragement of mutual investments and others.

The start of the functioning of the Customs Union was followed by signing an agreement for the central integration body for the Eurasian Union – the Eurasian Economic Commission – which was established on 18 November 2011.

### ***1.3 People***

#### ***Population***

The population of Kazakhstan is approximately 17,000,000. Population density is 14.5 persons per square kilometer. Some 54.7% of the population lives in urban areas, and the population is heavily concentrated in the northeast and southeast. In the early 2000's, economic growth brought significant movement from rural to urban areas.

#### ***Language***

The Kazakhstan Constitution dated 30 August 1995 declares that the state language in the Republic of Kazakhstan is Kazakh. On 11 July 1997 the Law of the

Republic of Kazakhstan No. 151-I on Languages was adopted. After adoption of this law, the Kazakh language as a language of state administration, legislation and legal affairs began to be used more. The Russian language is legally recognized as the language of interethnic communication.

### ***1.4 Economy***

#### ***General Overview***

Kazakhstan, the second largest of the former Soviet republics in land mass, possesses enormous fossil fuel reserves as well as plentiful supplies of other minerals and metals. It also has considerable agricultural potential with its vast steppe accommodating both livestock and grain production. Kazakhstan's industrial sector relies on the extraction and processing of these natural resources (including chemicals) and also on a relatively large machine building sector specializing in construction equipment, tractors, agricultural machinery and some defense items.

Commencing in the late 1990's Kazakhstan experienced economic growth which continued throughout the years of independence with GDP accounting to around USD 186,000,000,000 in 2011. The GDP per capita was USD 11,258 in 2011. As of 2013 the estimated nominal GDP per capita of Kazakhstan is approximately USD 14,000. According to the statistics data of the Statistics Agency of the Republic of Kazakhstan, the average real GDP growth rate for 2001-2011 was about 8.2% per annum. For the period from 2001 to 2011, the inflation rate in Kazakhstan in general was 8.3% on average per annum. Principal sectors within the economy are agriculture, non-ferrous metals, chemicals (including petrochemicals) and subsurface resources.

In addition to oil and gas, Kazakhstan has significant reserves of iron ore and non-ferrous metals including lead, magnesium, titanium, zinc, molybdenum, silver, copper, gold, tin, industrial diamonds, chrome, uranium, tungsten, bauxite, manganese, vanadium, beryllium, nickel, rhenium and gallium. Additionally, Kazakhstan has large coal deposits in Karaganda, Ekibastuz, Maikubinsk and Kushmurun.

## ***Doing Business Guide dated 1 October 2012***

Because of its strong macroeconomic performance and financial health, in 2000 Kazakhstan became the first former Soviet republic to repay all of its debt to the International Monetary Fund, 7 years ahead of schedule. In March 2002 the U.S. Department of Commerce granted Kazakhstan “market economy” status under U.S. trade law.

In September 2002 Kazakhstan became the first country in the former Soviet Union to receive an investment-grade credit rating from a major international credit rating agency.

At the same time Kazakhstan still suffers from regulatory and economic uncertainty. Kazakhstan also has a high level of government involvement in the economy. “Samruk-Kazyna”, the state’s National Welfare Fund, maintains either complete or partial ownership of many important companies in the country. This includes the entirety of state oil and gas producer National Company KazMunaiGas and uranium producer KazAtomProm. Samruk-Kazyna also owns the country’s more important airports, the Kazakhstan Electricity Grid Operating Company and many banking, development, industrial, railway, infrastructure and other assets.

### ***Transportation***

**Roads:** In 2011, Kazakhstan had about 97,160 kilometers of public roads, 86,217 kilometers of which were hard surface. The major artery, the 1,222-kilometer road between Astana and Almaty, was rehabilitated in the early 2000’s with funding from three international banks. With assistance from the European Bank for Reconstruction and Development, another important highway is being completed along the Caspian coast between Turkmenbashi in Turkmenistan and Astrakhan in Russia, serving Kazakhstan’s western oil outposts. There are 46 road crossings on the border with Russia, seven each on the borders with Kyrgyzstan and Uzbekistan and six on the border with China. Spurred by income from oil, ownership of private vehicles increased sharply in the early 2000’s, albeit from a very low starting point.

**Railroads:** In 2011, Kazakhstan had an estimated 14,892 kilometers of rail line, of which about 5,000 kilometers were electrified. Kazakhstan moves nearly 75 percent of its freight and 50 percent of its passengers by rail. The system is concentrated in the northern part of the country, where it connects with lines in

southern Russia. Lines also run northeast from Almaty to join the Trans-Siberian Railroad in Russia and westward from Almaty to Shymkent and then into European Russia. The main connector with Uzbekistan runs through Shymkent. A high priority is construction of a shorter rail route across Kazakhstan to link western China with Russia.

**Ports:** Kazakhstan's major ports are the cities of Aktau and Atyrau on the Caspian Sea and the Irtysh River ports of Oskemen, Pavlodar and Semey, which serve the northeastern industrial sector. As of September 2012 the capacity of transshipped dry and oil-bulk cargoes in Aktau port was 888,000 tons. The capacity of Atytau port is 550,000 tons.

**Inland Waterways:** Although Kazakhstan has about 4,000 kilometers of inland waterways, 80 percent of river traffic uses the Irtysh River. Eleven companies carry traffic through the system. The river transport's freight turnover accounted to 78.5 million tkm<sup>7</sup> in 2011, while the passenger turnover accounted to 112,900 people.

**Civil Aviation:** The number of passengers travelling by air within the country has risen from 1.3 million people in 2003 to 4.1 million in 2011. According to 2010 data, the average Kazakhstan citizen flew approximately once in a 4-5 year period. Air Astana is the main domestic airline that now serves a significant portion of Kazakhstan's total international and domestic passenger flights.

**Pipelines:** In 2011 the total length of pipelines in Kazakhstan was 20,230 kilometers: 12,318 of natural gas pipelines and 7,912 of oil pipelines. The total pipeline freight turnover accounted to 100.7 billion tkm. Kazakhstan is linked to the Russian pipeline system by the Atyrau–Samara line and to Russia's Black Sea oil terminal at Novorossiysk by the Caspian Pipeline Consortium line. In 2011 the construction of "NPS 11" of the pipeline Atasu-Alashankou was completed which allowed increasing its capacity to 12,000,000 tons per year. As of 2012 new works on extension of Atasu- Alashankou pipeline's capacity is underway according to which it is planned to increase capacity through the transit of Russian oil.

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<sup>7</sup> tkm means tonne-kilometre.

### ***Telecommunications***

The state-owned national telecommunications company, Kazakhtelecom, has received assistance from the European Bank for Reconstruction and Development in a nationwide program of expansion and modernization. The company relinquished its monopoly control of international and long-distance telephony in 2005, and several companies now compete in those markets. The number of fixed phone lines accounted to 4.3 million in 2011. Particular growth has occurred in mobile phone access; in 2011 more than 25 million subscribers were registered, compared with 29,000 in 1994.

### ***1.5 Foreign Trade<sup>8</sup>***

Overall, around three-quarters of Kazakhstan's exports are intermediate goods and raw materials, while finished goods constitute a small part. About half of the finished goods consumed within Kazakhstan are imported. Kazakhstan's exports principally consist of: 76.5% mineral products; 13% metals and metal products, of which more than one-quarter are copper and copper products; and the remaining 10.5% are divided among grain, chemical and related products, machinery, consumer goods and others. Most of the exports from Kazakhstan are to the European Union (51.4%), the People's Republic China (16.4%) and the CIS countries (12.4%, from which exports to Russia accounts to 6.9%).

The largest importers tend to be the countries of CIS accounting to 51% (of which the Russian Federation accounts to 38.6%), the EU accounting to 16.6% and the People's Republic China accounting to 15.8%. The main imported goods are: (i) machines, equipment and vehicles (ii) metals and metal products (iii) chemical and related products and (iv) mineral products.

### ***1.6 Key Statistics***

Please see attached Appendix A for key statistics on Kazakhstan.

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<sup>8</sup> The statistics data is provided for the period of January – June 2012.

### ***2 BUSINESS ENTITIES***

#### ***2.1 Legal Framework***

In accordance with the Civil Code of the Republic of Kazakhstan dated 27 December 1994 (as amended, the “**Civil Code**”), foreign and local investors may establish their presence in Kazakhstan in a number of organizational forms, including full partnerships, limited liability partnerships, (often referred to as limited liability companies), joint stock companies, representative offices and branch offices. A foreign company not wishing to establish a Kazakhstan legal entity may open either a representative office or a branch office. The choice of form of presence is important due to the different financial, legal, commercial and tax implications arising therefrom.

There are two forms of business entities that are popular in Kazakhstan: the Joint Stock Company and the Limited Liability Partnership (often referred to as a limited liability company).

#### ***2.2 Joint Stock Company***

The main law for the regulation of joint stock companies is the Law of the Republic of Kazakhstan dated 13 May 2003 No.415 on Joint Stock Companies (as amended, the “**JSC Law**”).

A Joint Stock Company (the “**JSC**”) is a legal entity that issues shares (securities) for the purpose of raising funds for the performance of its activities. Generally, shareholders are not liable for a JSC’s obligations and bear the risk of losses within the value of owned shares. A JSC is formed on the basis of a charter and decision of founders. JSCs may be founded by one or more individuals or legal entities.

Under the JSC Law, shareholders of a newly registered JSC must pay the initial charter capital within 30 days from the date of legal registration of the JSC. As with limited liability partnerships, contributions to charter capital can be made either in monetary form or in kind. However, for JSCs the value of any

contribution in kind must be determined by a licensed appraiser. Please see Section 2.8 below for information on the minimum charter capital requirements of JSCs.

### ***2.3 Economic Partnerships***

A partnership is a commercial organisation with its authorised capital divided into participation interests (not securities) of the founders (participants). The legislation provides for four types of economic partnerships: full, limited liability, commandite and additional liability partnerships. The most popular type is the limited liability partnership (the “**LLP**”).

#### ***Limited Liability Partnerships***

A limited liability partnership is a legal entity that is distinct from its founders. It may consist of one or more participants. The participant’s financial liability is limited to the amount of its investment (or participation interest) in the charter capital. This type of investment can be made either in a monetary form or in kind. Contributions in kind must be valued and are based on the agreement of all founders or on a decision made by a general meeting of participants. Where the value of an in-kind contribution exceeds 20,000 Monthly Calculated Indices (the “**MCI**”)<sup>9</sup> (approximately USD 215,750), the valuation should be verified by an independent appraiser. Please see Section 2.8 below for information on the minimum charter capital requirements of LLPs.

### ***2.4 Branches and Representative Offices***

A branch and a representative office are not separate legal entities, but subdivisions of a foreign legal entity’s head office and therefore parts of it. They are formed on the basis of Regulations and a Resolution of the head office.

A branch is permitted to carry out full commercial activities on behalf of the head office whereas a representative office is allowed only to undertake representative

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<sup>9</sup> As of 1 October 2012 1 MCI is equal to KZT 1,618.

functions and protection of the head office's interests. Neither a branch nor representative office requires capital injection to commence operations.

The registration procedure and filing costs for branches and representative offices are similar to that for Kazakhstan legal entities. Parent loans are not subject to licensing/registration/notification with the National Bank, and funding is not deductible for Kazakhstan tax purposes unless the loan is by a third party. A branch or representative office may be liquidated upon the decision of its head office.

### ***2.5 Branch Versus Subsidiary***

There are certain advantages and disadvantages to the use of a branch as a business vehicle rather than a Kazakhstan legal entity (the “**KLE**”). Selection of the right investment vehicle requires a fulsome analysis and depends, among others, on partner considerations and legal restrictions (e.g. licensing issues, local content rules and eligibility for investment incentives). Please see Appendix D for more details on the advantages and disadvantages of a branch versus a KLE.

### ***2.6 Consortium***

The Civil Code defines a consortium as a temporary association in which legal entities combine certain resources and coordinate efforts to solve specific business issues. A consortium has features similar to those of full partnerships. They are not, however, considered to be separate legal entities. The revenue and expenses of a consortium are passed through to the participants. From a practical point of view, all of the participants in a consortium should register in Kazakhstan for legal and tax purposes. One of the participants in a consortium normally serves as the operator (manager) of the consortium.

## **2.7 Registration Process**

The registration process amounts to a review and approval by the state authorities of the registration application and related documents submitted by the founders seeking to open a legal entity or branch. Upon all required examination/verification, the state authorities issue the legal and tax registration certificates, assign registration numbers and include the company in the State Register.

Overall, the process includes registration with two different Kazakhstan authorities (legal and tax); however, the process is done as a one step process. At the end of the process the state authorities issue the legal and tax registration certificates.

Clause 9 of the Law of the Republic of Kazakhstan dated 17 April 1995 No. 2198 on State Registration of Legal Entities and Registration of Branches and Representative Offices states that registration should take 11 business days; however in practice it may take approximately one month from the date of filing with the Ministry of Justice of the Republic of Kazakhstan.

The duty for state registration of a legal entity is KZT 10,517 (approximately USD 71).

## **2.8 Minimal charter capital**

There are various minimum requirements for the amounts of charter capital for legal entities depending on the form and/or type of business.

| <b>No.</b> | <b>Legal entities name</b>               | <b>Minimal charter capital amounts (KZT)</b> |
|------------|------------------------------------------|----------------------------------------------|
| 1          | Limited Liability Partnership (standard) | <b>161,800</b>                               |
| 2          | Joint Stock Company (standard)           | <b>80,900,000</b>                            |

## ***Doing Business Guide dated 1 October 2012***

|    |                                                                                                                                |                                          |
|----|--------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|
| 3  | Banks                                                                                                                          | <b>10, 000, 000, 000</b>                 |
| 4  | Insurance organizations                                                                                                        | <b>1,100,000,000 –<br/>1,600,000,000</b> |
| 5  | Insurance broker organizations                                                                                                 | <b>10,000,000</b>                        |
| 6  | Credit bureaus                                                                                                                 | <b>161,800</b>                           |
| 7  | Pension savings fund (open)                                                                                                    | <b>2,000,000,000</b>                     |
| 8  | Pension savings fund (corporate)                                                                                               | <b>2,000,000,000</b>                     |
| 9  | National operator of postal services                                                                                           | <b>1,000,000,000</b>                     |
| 10 | Mortgage organizations                                                                                                         | <b>800,000,000</b>                       |
| 11 | Bank loan organizations (except<br>brokers/dealers)                                                                            | <b>800,000,000</b>                       |
| 12 | Organizations conducting other types of<br>bank operations                                                                     | <b>5,000,000</b>                         |
| 13 | Broker and dealer organizations (with the<br>right for operating accounts)                                                     | <b>647,200,000</b>                       |
| 14 | Organizations conducting management of<br>pension assets                                                                       | <b>1,294,400,000</b>                     |
| 15 | Broker and dealer organizations (with no<br>right for operating accounts)                                                      | <b>647,200,000</b>                       |
| 16 | Organizations conducting management<br>over investment portfolios                                                              | <b>485,400,000</b>                       |
| 17 | Broker and/or dealer organizations (with<br>the right for operating accounts) and for<br>management over investment portfolios | <b>647,200,000</b>                       |
| 18 | Entities on organization of securities and<br>other financial instruments trade                                                | <b>809,000,000</b>                       |

|    |                              |                    |
|----|------------------------------|--------------------|
| 19 | Transfer-agent organizations | <b>113,260,000</b> |
|----|------------------------------|--------------------|

## ***2.9 Taxation of Business Entities***

For a summary of taxation of business entities please see Section 13.9.

### **3 FOREIGN INVESTMENT**

#### **3.1 General Overview**

One of the main legislative acts which regulates relations associated with investments in the Republic of Kazakhstan is the Law of the Republic of Kazakhstan No. 373-II dated 8 January 2003 On Investments (as amended, the “**Law on Investments**”).

The Law on Investments regulates relations connected with investments in Kazakhstan as well as determines legal and economic frameworks for encouragement of investments, guarantees protection of investors’ rights during investments in Kazakhstan, identifies measures for state support of investments and sets the procedure for settlement of disputes with participation of investors.

The Law on Investments guarantees to investors protection of rights and interests. In accordance with the Law on Investments, investors have a right to compensation for harm caused due to adoption by state authorities of acts which are not in compliance with the legislative acts of the Republic of Kazakhstan, as well as illegal actions (omissions) of public officers in accordance with the civil legislation. The Republic of Kazakhstan also guarantees limited stability of provisions of contracts concluded between investors and state authorities.

Nationalization can be carried out only in exceptional circumstances. In case of nationalization, the Republic of Kazakhstan is obliged to compensate the investors for the full amount of any losses resulting from the nationalization.

The Republic of Kazakhstan provides for certain forms of state support of investments for investors. Under the Law on Investments any individual or legal entity (both foreign or Kazakhstani persons) who invests in Kazakhstan can be classified as an investor.

As a general rule, investors have a right to invest in any objects or types of entrepreneurial activity. However for purposes of national security Kazakhstan legislation provides restrictions or prohibits investing in certain types of activity and (or) territories.

In accordance with the Law on Investments investment activity means activity of individuals or legal entities with regard to participation in the charter capital of commercial organizations or connected with creation or increasing of fixed assets used in entrepreneurial activity as well as fixed assets produced or received by a concessionaire (successor) based on a concession agreement.

In order to form a favorable investment climate for the development of the economy as well as encouragement of investments in Kazakhstan, the government provides for certain investment preferences.

Investment preferences include:

- i. exemptions from customs duties;
- ii. state grants in kind;
- iii. privileges relating to land tax and property tax for legal entities carrying out strategic investment projects; and
- iv. industrial privileges for legal entities carrying out strategic investment projects in residential areas with a low level of social economic development.

Please note that after amendments to the Law on Investments dated 20 February 2012, the investment preferences are granted according to the list of priority types of business as well as the list of strategic investment projects.

Under the Law on Investments investment preferences are granted only to Kazakhstan legal entities which may have foreign participants/shareholders.

According to the Law on Investments, in order to receive investment preferences a Kazakhstan legal entity submits an application to the Ministry of Industry and New Technologies of the Republic of Kazakhstan.

Within twenty business days after registration of the application the Ministry of Industry and New Technologies of the Republic of Kazakhstan must make a decision on granting of investment preferences.

Upon a favourable decision on granting of investment preferences the Kazakhstan legal entity and the Ministry of Industry and New Technologies

conclude an investment contract according to which the investment preferences are granted. According to the Law on Investments, the Investment Committee under the Ministry of Industry and New Technologies provides governmental support to investments by concluding investment contracts and granting incentives to investors.

### ***3.2 Free Trade Zones***

The Law of the Republic of Kazakhstan dated 21 July 2011 No. 469-IV on Special Economic Zones defines a “special economic zone” as a part of the territory of the Republic on which companies carrying out projects in priority industries of the economy enjoy a special legal and taxation regime. Such zones are created for the term of up to twenty five years and with specific purposes and activities to be carried out on their territory. This regime provides a number of preferences to legal entities operating in the zones, including exemption from customs on certain imported goods and exemptions from corporate income tax and land and property taxes. Please see Section 13.2 for further information on these incentives.

As of October 2012 there are 9 special economic zones established, 6 of which have been functioning.

The current special economic zones are the following:

- “Astana New City” in Astana (the expiry date is in 2027);
- “Seaport Aktau” in Aktau (the expiry date is on 1 January 2028);
- “Innovation Technology Park” in Almaty (the expiry date is on 1 January 2028);
- “Ontustik” in Sairam district of South-Kazakhstan region (the expiry date is on 1 July 2030);
- “National Industrial Petrochemical Park” in Atyrau oblast (the expiry date is on 31 December 2032);
- “Burabai” in Akmola oblast (the expiry date is on 1 December 2017);
- “Saryarka” in Karaganda oblast (the expiry date is on 1 December 2036);
- “Khorgos – Eastern Gate” in Almaty oblast (the expiry date is in 2035);
- “Pavlodar” in Pavlodar (the expiry date is in 1 December 2036).

#### **4 FOREIGN CURRENCY MARKET AND FOREIGN CURRENCY RULES**

Kazakhstan first issued its national currency, the Kazakhstan Tenge (the “**KZT**”), in November 1993. On 5 April 1999 the National Bank of Kazakhstan ceased intervention in the currency's support and allowed KZT to freely float on the Almaty Financial Instruments Exchange (AFINEX)<sup>10</sup>.

A market exchange rate is fixed daily at the Kazakhstan Security Exchange (the “**KASE**”). The market exchange rate is an average weighted exchange rate of KZT to a foreign currency formed at a substantive session of the Kazakhstan stock exchange and determined in a procedure established by the Kazakhstan Ministry of Finance and the Kazakhstan National Bank.

The National Bank of Kazakhstan is the main authority which implements currency regulation in Kazakhstan and registers all currency transactions in Kazakhstan. According to Kazakhstan legislation, in general transactions between Kazakhstan legal entities should be in KZT, except some banking transactions in foreign currency, sale and purchase of shares in foreign currency and transactions with participation of the authorized bodies of Kazakhstan. Alternatively, transactions between a Kazakhstan legal entity and a foreign legal entity can be denominated in any currency. The regulations for non-residents are less restrictive as they allow conducting currency operations both in KZT and foreign currency. Foreign currency may be sold or purchased at banks and currency exchange providers holding a license for carrying out such activities.

The Law of the Republic of Kazakhstan dated 13 June 2005 No. 57-III on Currency Regulation and Currency Control (as amended, the “**Currency Law**”) is the main legal act that regulates a wide range of issues arising when performing currency operations by residents as well as foreigners on the territory of the Republic. The regulations are defined for individuals and legal entities separately.

In accordance with the Currency Law, certain currency transactions (operations) between residents and non-residents of Kazakhstan must be registered with or notified to the National Bank of the Republic of Kazakhstan (the “**NBK**”). The

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<sup>10</sup> On 16 March 1999 AFINEX merged with KASE.

application of these two regimes depends on the type of transaction and its conditions, amount and period.

Currency transactions with non-residents related to commercial and financial loans for a period exceeding 180 days, direct investments and other transactions are subject to registration with the NBK (with certain limited exceptions) provided that the payment by a non-resident in Kazakhstan exceeds USD 500,000 or the payment by a resident out of Kazakhstan exceeds USD 100,000:

Export/import of works and services, contribution to the charter capital (of less than 10% thereof), opening of a bank account by a Kazakhstan legal entity in a foreign bank and other currency transactions with non-residents are subject to notification to the NBK provided that the payment by a non-resident exceeds USD 500,000 or the payment by a resident exceeds USD 100,000 and /or the amount of payment and/or transfer with respect to operations with derivative financial instruments as well as payments related to export (import) of works or services exceed USD 100,000.

All changes and additions to a currency agreement that is subject to registration or notification must be reported at the place of registration or notification no later than 60 calendar days from the date of such changes and additions.

## **5 BANKING AND FINANCE**

### **5.1 Banking System**

The main legislative act which regulates the banking system is the Law of the Republic of Kazakhstan dated 31 August 1995 No. 2444 on Banks and Banking Activity in the Republic of Kazakhstan (the “**Law on Banks**”).

Kazakhstan has a two-tier banking system. The National Bank is the central bank of Kazakhstan and represents the upper (first) tier of the banking system of Kazakhstan. All other banks represent the lower (second) tier of the banking system, excluding the Kazakhstan Development Bank which has a peculiar legal status.

The legal status of the National Bank is regulated by the Law of the Republic of Kazakhstan dated 30 March 1995 No.2155 on the National Bank of the Republic of Kazakhstan.

The National Bank performs regulation and supervision over certain aspects of banking activities within the limits of its authority and contributes to the formation of basic conditions for the functioning of banks and organizations performing certain banking operations.

Regulatory and supervisory functions of the National Bank in respect of the banks and organizations performing certain banking operations are aimed at the maintenance of the stability of the financial system of the Republic of Kazakhstan. Before 12 April 2011 the aforesaid functions were carried out by the Agency of the Republic of Kazakhstan for the Control and Supervision of the Financial Market and Financial Organizations. However the agency was abolished and became a committee of the National Bank of the Republic of Kazakhstan.

The lower (second) tier of the banking system in Kazakhstan is represented by Kazakhstan second tier banks including banks with foreign participation as well as Islamic banks. As of 1 October 2012 there are 38 second tier banks in Kazakhstan.

The second tier bank with foreign participation means the second tier bank in which more than one-third placed shares belong to:

- i. non-residents of the Republic of Kazakhstan;
- ii. legal entities – residents of the Republic of Kazakhstan, in which more than one-third placed shares or participation interest in the charter capital belong to non-residents of the Republic of Kazakhstan; and
- iii. residents of the Republic of Kazakhstan which are authorized to manage the assets of non-residents of Kazakhstan or legal entities mentioned in point ii above.

Islamic banks are second tier banks which carry out their activity in accordance with the principals of Islamic financing.

Banking activity is subject to licensing controlled by the National Bank. In order to establish a second tier bank in Kazakhstan a special approval needs to be obtained from the National Bank.

Under Kazakhstan legislation<sup>11</sup> banks must make a 100% provision for the full amount of an outstanding loan that is classified as “unrecoverable”. A loan is classified as “unrecoverable” if<sup>12</sup>:

- Debtor is registered in an offshore jurisdiction from a specified list<sup>13</sup> or 50% or more percent of shares of the debtor are owned directly or indirectly by an entity registered in such offshore jurisdiction;
- Decisions of the debtor are determined by an entity registered in such offshore jurisdiction.

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<sup>11</sup> Resolution of the Board of the National Bank of the Republic of Kazakhstan dated 30 December 1997 No. 479 on Establishment of the Rules on classification of banking, non-banking assets, requirements of National Bank of the Republic of Kazakhstan and creation of provision against them

<sup>12</sup> Resolution of the Agency of the Republic of Kazakhstan for Control and Supervision of the Financial Market and Financial Organizations dated 25 December 2006 No. 296 on Establishment of Rules on Classification of Assets, Contingent Obligations and Creation of Provisions (Reserves) Against Them

<sup>13</sup> Resolution of the Board of the Agency of the Republic of Kazakhstan for Control and Supervision of the Financial Market and Financial Organizations dated 2 October 2008 No. 145 on Establishment of list of offshore zones for the purposes of banking and insurance activities and activities of professional participants of securities' market;

In Kazakhstan intergovernmental banks can be established on the basis of an international treaty, where the founders are the Government of the Republic of Kazakhstan (authorized state authority) and the government of another state.

Under the Law on Banks, the second tier banks have a right to establish associations. As of today there are two main associations:

- i. Kazakhstan Banks' Association; and
- ii. The Financial Institutions' Association of Kazakhstan.

The purposes of the above associations are coordination of banks' activity, protection and representation of common interests as well as carrying out joint projects and solving of joint objectives.

### **5.2 Capital Markets**

Transactions with financial instruments in the organized securities' market of Kazakhstan are carried out on KASE. Today KASE is the only stock exchange existing on the territory of the Republic of Kazakhstan.

The main legislative act which regulates transactions on KASE is the Law of the Republic of Kazakhstan dated 2 July 2003 No. 461-II on Securities' Market (as amended, the "**Law on Securities' Market**").

Currently, the KASE is a universal financial market, which is effectively divided into five major sectors: the foreign currency market, the government securities market, the market of shares and corporate bonds, the repo operations<sup>14</sup> and the derivatives market.

Within the eight month period ended in August 2012, the total volume of transactions carried out on KASE by methods of public trade is approximately USD 132,746,700,000. However most of the transactions are done with foreign currency trade (approximately USD 66,856,800,000). The volume of deals with corporate shares is approximately USD 1,054,700,000.

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<sup>14</sup> Operations with securities according to which the seller undertakes to buy back a security from the purchaser in the future.

Under Sub-Clause 22-1.1 of the Law on Securities' Market, Kazakhstan legal entities are allowed to place their shares also on foreign stock exchanges. However prior to such listing, Kazakhstan legal entities are required to offer 20% of the shares to be placed on KASE and obtain the consent of the NBK.

According to the Law on Securities' Market, the above requirements apply to legal entities (1) established in accordance with the legislation of the Republic of Kazakhstan, or (and) (2) not less than 2/3 of assets of which are located in the Republic of Kazakhstan, or (and) (3) place of effective management of which are located in the Republic of Kazakhstan.

## **6 LABOUR RELATIONS AND SOCIAL SECURITY**

### **6.1 Labor Relations**

Employment relations arising in the Republic of Kazakhstan are regulated by the Labor Code dated 15 May 2007 No. 252-III (as amended, the “**Labour Code**”).

The Labor Code provides that in order to perform employment duties, the parties are to conclude an employment contract. An employment contract is a written contract between employer and employee governing wages, benefits, position and working conditions. The Labor Code requires certain terms to be included in employment contracts.

The Labor Code provides for various grounds for termination of an employment contract at the initiative of either the employee or employer. However, the Labor Code does not allow termination of an employment contract by an employer at will.

Normally initial employment contracts are entered into with a new employee for a period of one year. There is a three month probation period during which time the employer may dismiss the employee. After this three month period expires, the employment contract runs until the expiry of the one year period. The employer may inform the employee prior to the end of the one year period that the employer will not renew the employment contract, upon which the employment relations will expire with no further liability upon conclusion of the one year term of the employment contract.

If the employer does not notify the employee that the employer will not renew employment relations, then upon conclusion of the one year period, the employment contract rolls over into a permanent employment relationship. In this situation, termination by the employer may only occur upon the grounds set forth in the Labor Code, but termination at will without cause by the employer is not among them.

## ***6.2 Working Conditions***

Standard working hours are 40 hours a week, with special provisions for shift work. The amount of work remuneration is established by the employer independently and may not be lower than the minimum amount of work remuneration as established by Kazakhstan's legislation.

## ***6.3 Social Security System***

Please see information under the heading “Social Security Taxes” under Section 14.4.

## ***6.4 Foreign Personnel***

The two main legal acts regulating the relations between a Kazakhstan legal entity and foreign personnel are the Labor Code and the Rules and Conditions for Issuance of Permits to Foreign Workers for Employment and to Employers for Attracting Foreign Labor Force dated 13 January 2012 No. 45.

Work permits must be obtained for all foreign employees in companies, branches and representative offices, except for the head of a branch or representative office, within 120 days of physical presence in Kazakhstan. Obtaining work permits can be time-consuming, sometimes taking as long as four months. There are four main categories of work permits: (1) for chief executives and their deputies, (2) for top managers, (3) for highly educated specialists, and (4) for qualified workers.

Work permits are obtained by submitting the required documents to the regional departments of the Ministry of Labor and Social Protection, including copies of employment contracts and educational and specialist certifications for each employee. The decision to grant a work permit will depend on the ability to justify the need for the specific specialist in the Kazakhstan labor market. When a work permit is granted, the employer deposits a guarantee/security payment in a bank account in an amount equal to the cost of a return ticket to the country of the employee's residence. The money will be returned to the employer when the employee leaves Kazakhstan.

Under the latest regulations, work permits are valid for a period of up to one year, depending on the category of employee. Under the current regulations, while visas are generally provided for the entire territory of Kazakhstan, work permits are issued for the specific region (oblast) according to the place of work under the employment contract. The transfer of an employee from one region to another requires changing of a work permit.

In accordance with the Agreement on legal status of working migrants dated 19 November 2010, the citizens of Russia and Belarus are exempt from the requirement to obtain work permits in Kazakhstan.

For 2012, the Government established a quota for employing foreign labor in Kazakhstan at 1% of the Republic's economically active population. Currently, approximately 48,200 work permits are available for foreigners (excluding citizens of Russia and Belarus, for whom work permits are not required).

### ***6.5 Secondment***

Foreigners assigned to Kazakhstan for short work trips usually use a secondment/service arrangement. Kazakhstan law does generally envision the concept of a "secondment" structure used for seconding personnel to work in Kazakhstan. However, the definition of a "secondment" is provided only in the Tax Code.

Secondment is a service on provision of personnel, and for tax purposes it is intended to ensure that a foreign entity seconding personnel to work in Kazakhstan has no taxable presence in Kazakhstan in the form of a permanent establishment.

Please note that if a secondee works for less than 120 calendar days there is no need to obtain a work permit.

The Tax Code provides for the following criteria that must be simultaneously met in order for a secondment agreement to qualify as a secondment arrangement for Kazakhstan tax purposes:

- The seconded acts exclusively on behalf of and in the interests of the entity to which he/she is seconded;
- The seconding company is not responsible for the results of work of the seconded in Kazakhstan;
- The income of the seconding company is determined subject to the time of the seconded performing duties on behalf of and in the interests of the entity to which the seconded is seconded and the mark-up does not exceed 10% of the total costs associated with the provision of such seconded; and
- The seconding company furnishes the entity, to which the seconded is seconded, with copies of all underlying documentation supporting the actual costs incurred in relation to the provision of the seconded.

The new work permit rules define a new term of “corporate transfer” which is a temporary transfer of a foreign person based on a letter and/or agreement on corporate transfer from a foreign legal entity to its Kazakhstan representative office, branch, subsidiary, or affiliated party, i.e. this does not apply to unrelated companies. The secondment arrangement can be used as a basis for a corporate transfer or as a corporate transfer agreement.

The work permit under the corporate transfer is granted for a period specified in the corporate transfer letter and/or agreement but for not more than three years. To apply for a work permit under the corporate transfer, the Kazakhstan entity which is attracting the foreign personnel must submit to the local authority a corporate transfer letter and/or agreement, which should include terms of the corporate transfer, names and positions of provided foreign personnel and other documents in accordance with the legislative requirements.

## **7 OIL AND GAS**

### **7.1 Legal Regime**

The oil and gas and mining industry are governed by the Law of the Republic of Kazakhstan dated 24 June 2010 No. 291-IV On Subsurface and Subsurface Use (as amended, the “**Subsurface Use Law**”) which replaced the Law of the Republic of Kazakhstan dated 27 January 1996 No. 2828 On Subsurface and Subsurface Use. Notwithstanding the new Subsurface Use Law, certain provisions of the old law still apply to subsurface use contracts entered into before the effectiveness of the new Subsurface Use Law.

The Subsurface Use Law governs, among other things, the rights and obligations of subsurface users including in relation to exploration, production and abandonment of subsurface operations.

To obtain subsurface use rights, a subsurface user will enter into a subsurface use contract setting out its rights with respect to a particular subsurface use area. The competent governmental authority for the execution and oversight of subsurface use contracts is the Ministry of Industry and New Technologies of the Republic of Kazakhstan for mining and the Ministry of Oil and Gas of the Republic of Kazakhstan for oil and gas.

The competent authority has authority for issuing rules and regulations, overseeing tenders, granting subsurface use rights, representing the Republic of Kazakhstan in negotiations and in executing subsurface use contracts, approving work programs and amendments to subsurface use contracts, suspending or terminating subsurface use contracts and generally exercising control over the subsurface user.

The Subsurface Use Law sets forth extensive reporting requirements. Kazakhstan legislation also requires compliance with stringent procurement rules and use of local Kazakhstan content for subsurface use operations.

In accordance with Resolution of the Government of the Republic of Kazakhstan No. 1412 dated 25 December 2010 on Approval of the Model Contracts for Subsurface Operations, model forms of subsurface use contracts (exploration model contract; production model contract, model contract on exploration and production and model contract on construction and operation of underground structures not related to exploration and production) have been issued. Any subsurface use contract entered into with the competent authority will largely follow the model form.

## ***7.2 Subsurface Use Contracts***

Subsurface use contracts generally contain provisions that correspond to the language found in the Subsurface Use Law, with specific modifications permitted in relation to certain provisions including local content and the work program.

Subsurface use contracts are entered into on the basis of tenders or, in limited cases, by direct negotiations. The different types of subsurface use contracts are as follows:

- **Exploration Contracts:** Such contracts may be entered into for a term of six years, with the right to extend for appraisal of a commercial discovery. The subsurface user that has made a commercial discovery under an exploration contract has the exclusive right to negotiate a production contract. If the subsurface user and the competent authority are unable to agree on the terms of the production contract, then the subsurface user is entitled to receive reimbursement of its costs if a production contract is entered into by the competent authority with a third party (and such production contract must be tendered on the same terms as were offered to the original subsurface user).
- **Production Contracts:** The term is not fixed but rather depends on the plan for production operations.
- **Combined E&P Contracts:** These contracts require governmental approval and are granted solely for deposits of strategic importance or for complex geological structures.

### ***7.3 Transfer Restrictions***

The Republic of Kazakhstan has a consent right and a priority right to purchase in relation to the transfer of a subsurface use interest including any shares or equivalent ownership interests in a subsurface user or any parent company up-the-chain that may determine and/or influence decisions adopted by such subsurface user if the principal activity of such parent company is related to subsurface use in Kazakhstan. There are limited exceptions for certain transfers such as among affiliated companies or trading on a securities exchange post-offering (the offering itself is subject to the consent and priority right of the Republic of Kazakhstan).

### ***7.4 Participation of the Republic of Kazakhstan in the oil and gas and mining sectors***

Pursuant to the Constitution, the Republic of Kazakhstan owns all subsurface resources. As a general matter, the State carefully manages its subsurface resources and often participates in both mining and oil and gas projects through national holding companies (such as KazAtomProm in the uranium mining sector, Tau-Ken Samruk in other mining sectors and NC KazMunaiGas and KazMunaiGas EP for oil and gas projects). Typically these national companies enter into joint ventures with international mining or oil companies.

The Government of the Republic of Kazakhstan has approved a list of subsurface areas of the Republic of Kazakhstan and the Caspian seabed in which a Kazakhstan national company must have a participatory interest. Through the obligatory participating interest of the national company in the applicable subsurface use contracts for such areas, the public interests of the State are represented.

### **7.5 Local Content**

The national legislation of the Republic of Kazakhstan establishes extensive requirements regarding local content, which are obligatory for every subsurface user.

The definition of local content is specified in the Subsurface Use Law. In short local content means Kazakhstani citizens, as well as goods, works and services of Kazakhstan origin.

The Subsurface Use Law contains the requirement for use, on a mandatory basis, of equipment, materials and goods produced in the Republic of Kazakhstan provided that they correspond to the requirements of the tender and Kazakhstan legislation on technical regulation by the subsurface user. Moreover the subsurface user must use Kazakhstan producers of goods, work and services when carrying out production operations, including the use of vessels and other types of transportation vehicles, if these services correspond to the standards, price and qualitative characteristics of the same types of works and services provided by non-residents of the Republic of Kazakhstan.

There are also requirements regarding preference on using Kazakhstan personnel and equal payment conditions for Kazakhstan personnel as compared to hired foreign personnel.

Each subsurface use contract contains specified percentages of the local content that must be used by a subsurface user in the conduct of its operations.

Non-compliance with local content requirements may lead to fines under Kazakhstan law and the subsurface use contract and even termination of the subsurface use contract itself.

### ***7.6 Procurement Requirements***

Subsurface users are subject to very strict procurement regulations. With certain limited exceptions, nearly all contracts related to subsurface use operations must be tendered and the procedures for the proper conducting of such tenders are complex. Special consideration, including preferred pricing requirements, is given to local content under the procurement rules.

## **8 REAL ESTATE AND AGRICULTURE**

### **8.1 Immovable property**

Activities associated with land usage and ownership are regulated by the Land Code of the Republic of Kazakhstan dated 20 June 2003 No. 442-II (as amended, the “**Land Code**”). According to the Land Code, foreigners, stateless persons and foreign legal entities have a right to own, with certain exceptions, industrial and residential properties.

However according to the Law of the Republic of Kazakhstan dated 19 June 1995 No. 2337 on Legal Status of Foreigners, only foreigners with permanent residence have a right to own apartments and other property. Please note that in order to have status of foreigner with permanent residence, a special approval and document confirming a right on permanent residence must be obtained. The procedure is set out in the Resolution of the Government of the Republic of Kazakhstan dated 21 January 2012 No. 148. Those who do not have special approval with respect to permanent residence and residing in Kazakhstan under other lawful grounds are considered as temporary residing foreigners. They cannot own immovable property but are allowed to lease.

Generally, Kazakhstan legal entities (including those owned by foreigners) are allowed to own immovable property. The only restrictions for foreigners including Kazakhstan legal entities with foreign participation in relation to land plots are set out in the Land Code according to which foreigners are prohibited to own farm land plots and lands for maintenance of forestry. They also are prohibited to own any lands located in the frontier zone and frontier strip of the Republic of Kazakhstan.

Under the Law of the Republic of Kazakhstan dated 26 July 2007 No. 310-III On State Registration of Title to Immovable Property (as amended, the “**Law on State Registration of Rights to Immovable Property**”), the following titles to immovable property must be registered with local justice authorities:

1. ownership right;
2. right of economic management;
3. right of operational management;
4. land usage right for a period exceeding 1 year;
5. servitude in favor of dominant land plot or other item of immovable property for a period exceeding 1 year.

Please note under the Law on State Registration of Rights to Immovable Property, the transactions transferring the above rights to land plots must be registered within six months from the execution date.

### ***8.2 Ownership restrictions in respect of agricultural land plots for foreigners***

Generally, foreign investors are permitted to operate in the agricultural business. However under the Land Code foreign citizens, persons without citizenship, foreign legal entities, as well as legal entities registered in Kazakhstan, where more than 50% of the charter capital belongs to foreign or stateless persons, cannot own agricultural land plots.

Such persons according to Kazakhstan legislation can only lease agricultural land plots for a period not exceeding 10 years. The leasing time period limitation for privately owned legal entities with mostly Kazakhstan participants is 49 years.

The decision on granting of agricultural land plots for leasing is made by authorized territorial local executive authorities (akimats). For such lease agreements akimats must use payment rates established by the Government of the Republic of Kazakhstan.

The Land Code allows Kazakhstan legal entities and persons to purchase farm land plots from private owners. In this case no consent of state authorities is required. However the private owners are prohibited to dispose their farm land plots to foreign citizens, persons without citizenship, foreign legal entities, as well as legal entities registered in Kazakhstan, where more than 50% of the charter capital belongs to foreign or stateless persons.

Kazakhstan legislation prohibits subleasing of agricultural land plots, except for using it as a pledge or contribution to the charter capital of a legal entity.

As a competition measure Kazakhstan legislation also establishes the maximum size of agricultural land plots that may be leased/owned by a single person or entity.

### ***8.3 Regulations on grants***

Grants of subsidies are provided by the Government of the Republic of Kazakhstan to individuals/legal entities, who engage in agricultural activities in Kazakhstan. The Ministry of Agriculture determines the priority areas of agriculture that should be subsidized, and annually the Rules of agricultural grants are approved by the Government of the Republic of Kazakhstan. In accordance with these Rules subsidies are typically provided for seed farming, livestock breeding, improvement of productivity and quality of livestock products, coordination of the new systems of control of the agricultural production and others.

## **9 OTHER REGULATORY MATTERS**

### **9.1 Antitrust Regulation**

The main legislative acts with respect to antitrust regulation are the Law of the Republic of Kazakhstan dated 25 December 2008 No. 112-IV On Competition (as amended, the “**Law on Competition**”) and the Law of the Republic of Kazakhstan dated 9 July 1998 No. 272-I On Natural Monopolies and Regulated Markets (as amended, the “**Law on Natural Monopolies**”).

The Law on Competition is aimed to protect competition, create fair conditions for different types of businesses and to prevent monopolistic, anti-competitive and unfair practices. It provides various measures which can be used by competent authorities to promote competition and punish violations.

Under the Law on Competition certain types of transactions require obtaining prior antimonopoly approval. Such transactions include acquisition of more than 25% of shares if before such acquisition the buyer owned 25% or less of shares in the target. Please note that antimonopoly approval is required if:

- i. one of the transaction parties is an entity included in the State Registrar of Market Entities having dominant and monopolistic position;
- ii. total balance sheet of the buyer’s and target’s assets exceeds KZT 3,236,000,000 (approx. USD 21,573,500); or
- iii. the buyer’s and target’s total sales’ volume of goods for the previous fiscal year exceeds KZT 236,000,000 (approx. USD 21,573,500).

In accordance with the Law on Competition, the application for antimonopoly consent with certain documents can be reviewed by the Agency of the Republic of Kazakhstan for Competition Protection for up to 50 calendar days. However in practice it may take longer.

The Law on Natural Monopolies regulates the activity of and establishes pricing control for entities having a natural monopoly position in certain markets of Kazakhstan. Natural monopoly regulation encompasses railway transportation, electric and thermal power industry, production of petroleum products,

transportation of oil, civil aviation, port-related activity, telecommunications and postal services as well as the gas business.

## ***9.2 Consents***

In addition to competition consents discussed in Section 9.1 above as well as consents in relation to the transfer of a subsurface use interest set out in Section 7.3, Kazakhstan legislation provides certain requirements on obtaining of consents from state authorities.

### ***Strategic assets***

Under Kazakhstan legislation a strategic asset means property which has social-economic significance for the development of the state and possession, usage or disposal of which will influence the national security of Kazakhstan. Please note that there is a special resolution of the Government which establishes a list of strategic assets.

Under the Sub-Clause 193-1.4 of the Civil Code the Government of the Republic of Kazakhstan has a pre-emptive right to purchase strategic assets. In practice, the alienation of the strategic assets to the third parties also requires obtainment of the consent of the Government.

### ***Telecommunications***

Foreigners, stateless persons and foreign legal entities are prohibited directly or indirectly from owning more than 49% of shares in the charter capital of organizations - operators of inter-city and (or) international lines which own terrestrial lines of telecommunication.

Acquisition of more than 10% of shares in the charter capital of organizations which own or carry out activity on management or exploitation of telecommunication lines as operators of inter-city and (or) international lines requires obtaining the consent of the competent authority in the area of telecommunication and information.

### **9.3 Intellectual Property**

Under Kazakhstan's legislation, intellectual property is the exclusive right of an individual/company to the results of intellectually creative activities, production of an individual/company and works performed or services rendered by the individual/company (such as a trade name, trade mark and service mark).

As the legislation on intellectual property is still under development, the enforcement of existing normative legal acts may be problematic. Currently, this sphere is regulated by laws on Copyrights and Related Rights, on Trademarks, on the Protection of Selection Achievements, on the Legal Protection of Topologies of Integrated Circuits and by the Patent Law, among others.

The main state agency that regulates the matters arising in the intellectual property sphere is the Committee for Intellectual Property Rights under the Ministry of Justice and the National Institute of Intellectual Property. The first is responsible for implementation of state policy and the latter for acceptance of applications and registration of trademarks.

### **9.4 Consumer Protection**

The protection of consumers is governed by the Civil Code depending on the type of contract and by the Law of the Republic of Kazakhstan dated 4 May 2010 No. 274-IV on Protection of Consumer Rights (as amended, the “**Law on Protection of Consumer Rights**”). As the Civil Code sets general regulations concerning consumer rights and protection, the latter governs the relationship between the consumer and vendor or provider of works and services on a more specific basis.

As per the Law on Protection of Consumer Rights, consumers have the following primary rights: to purchase commodities freely, to use work and services, to enjoy the high quality and safety of goods and services, to full and reliable information on goods and the right to join public associations of consumers. A seller or manufacturer is obliged to provide goods in appropriate quality, presenting no defects and no harm for health and in the agreed quantity. They may not restrict any consumer's rights guaranteed and protected by the law. In the event of breaking the law, the parties are subject to civil liability.

## **10 IMPORTING AND EXPORTING**

### **10.1 Trends in Customs Policy**

Within the frame of Eurasian Economic Community, effectively from 1 July 2010, Kazakhstan became a member-state of the Customs Union between Russia, Kazakhstan and Belarus with a single customs territory regulated by single customs legislation (the “**CU legislation**”).

Abolishing internal customs borders within the territories of CU member-states, CU legislation established unified customs duties applicable for import and export operations conducted through a single external customs boundary of the Customs Union.

CU legislation comprises the Customs Code of the Customs Union and a number of trilateral agreements and protocols mutually accepted by CU member-states. Apart from acceptance of CU legislative documents, Kazakhstan introduced its own Kazakhstan Customs Code and a number of decrees, rules and procedures prepared in accordance with the provisions of CU legislation and adapted to particular Kazakhstan practice.

Similar to tax compliance issues, customs issues often require advance planning and proper risk management in the current CU and Kazakhstan environment.

### **10.2 Import Restrictions**

As part of the non-tariff regulations, CU legislation prescribes that certain types of goods imported to the territory of the Customs Union from third countries must comply with CU quality standards and must have a certificate of conformity to such standards.

In addition to limitations established by CU legislation, certain restrictions are also established by Kazakhstan domestic legislation (e.g. bans, quotas, licensing, registration, etc.) that may apply to the import or export of certain goods (such as uranium, ozone products, special-purpose vehicles, oil products, weapons and

others) to/from the territory of Kazakhstan from/to CU member-states or third countries.

### ***10.3 Customs Duties***

Goods are classified based on the Single Customs Tariff of the Customs Union, which is generally based on the Harmonized System. The Customs Tariff is determined at the Customs Union level and is subject to changes upon unanimous approval by all CU member-states.

A country of origin of goods is determined for the purposes of applying tariff and non-tariff regulatory measures upon importation/exportation of goods to/from the territory of the Customs Union. The country of origin of goods is defined as the country where the goods either (i) were wholly produced or (ii) underwent sufficient processing in accordance with specified criteria.

The customs value of goods should represent the price actually paid or payable for the goods under the sales terms (i.e., the so-called “transaction value of imported goods” method). The customs value of goods should include, among others, transportation costs, insurance, royalties (license), etc. Where a transaction for the delivery of goods is carried out between related parties, the customs authorities may potentially use other alternative methods for determining the customs value of the imported goods based on customs valuation methods, as follows:

- o On the basis of transaction value of identical goods;
- o On the basis of transaction value of similar goods;
- o Deduction of value;
- o Addition of value; or
- o Reserve method (typically, applied based on statistical data or official publications).

There is no direct relation between the customs value methods and transfer-pricing methodology for corporate income tax purposes; methods are deemed to be similar to the transfer-pricing methods in calculations, but disputes may arise.

The importation of goods to Kazakhstan from third countries (not CU member-states) under the “free circulation” customs regime generally attracts import VAT at the current rate of 12% and import customs duties at rates ranging from 0% to 25% (on average; higher rates exist for certain goods) depending on the classification of a particular imported good and excise duties (in case of importation of excisable goods).

The importation of goods to Kazakhstan from CU member-states is not viewed as a “customs event” and does not result in any import customs duties, but still attracts 12% import VAT based on intra-community VAT rules of CU legislation and Kazakhstan tax legislation adapted in compliance with CU legislation as well as the excise duties according to the Kazakhstan Tax Code (if applicable).

Additionally to the membership in the Customs Union, Kazakhstan has a number of bilateral and multilateral Free Trade Agreements within the CIS. Therefore, trade between the CIS member states is not generally subject to import customs duties in the country of destination, provided that all of the following conditions are met:

1. Goods are exported on the basis of a contract between residents of the member states;
2. Goods are imported from the customs territory of a member state to the customs territory of the other member state;
3. Imported goods may not leave the customs territory of a member state;
4. Imported goods are confirmed with a certificate of origin from a member state (i.e., ST-1).

For the purposes of the CIS Free Trade Agreement, the following qualifies as a resident:

- o A legal entity (i.e. entity incorporated in a member state), or
- o An entity which does not have the status of a legal entity but is subject to taxation in the member state on the basis of place of management, registration, establishment or any other similar criteria.

Exports of goods from Kazakhstan outside/inside of the Customs Union are generally subject to zero-rated VAT and exempt from excise taxes unless the applicable legislation specifically provides otherwise. Export customs duties are generally established only for the exports of goods outside of the Customs Union.

The Kazakhstan Customs Code and CU legislation envisage a number of customs regimes with tax and duty consequences, which generally provide for a claw back or suspension of import/export customs duties, VAT and excise taxes including:

- processing within the customs territory;
- processing for free circulation;
- processing outside the customs territory;
- free warehouse.

#### ***10.4 Temporary Import Relief***

The “temporary import” customs regime may provide for the full or partial exemption from import VAT and import customs duties. Generally, the term of the “temporary import” customs regime may not exceed 2 years.

A) Partial Exemption: Under the “temporary import” customs regime, import VAT and customs duties are payable on a monthly installment basis at 3% of the import VAT and customs duties that would have been paid had the imported assets been imported under the “free circulation” regime (i.e. normal import).

B) Full Exemption: There is a list of goods allowable to be imported under “temporary import” customs regime with full exemption, which is extended to certain technological equipment, models, exhibition and advertising materials and others.

The maximum allowable term of “temporary importation” (i.e., 2 years) may be extended up to 2 years or other periods, which may be specifically agreed with the Committee of the Customs Union in each particular case.

Upon termination of the “temporary import” customs regime, the imported goods would be required to either be re-exported from the territory of the Customs Union or released under a different customs regime (e.g., “free

circulation”, “customs warehouse”, etc.) with the obligation to pay any applicable import VAT and import customs duties.

In case of a further classification of goods under the “free circulation” customs regime, the import VAT and customs duties already paid by installments should be offset-able against import VAT and customs duties payable under the “free circulation” regime.

Under the “temporary import” customs regime, imported goods should remain in their original state, except for changes due to natural wear or loss under normal conditions of transportation, storage and use (operation). Only those actions, which are required to ensure safety, including minor repairs, maintenance and other operations required to maintain the imported goods in proper condition, are allowed.

### ***10.5 Import VAT Incentives***

There are certain exemptions from import VAT envisioned by the Kazakhstan tax and customs and related CU legislation.

Under the Tax Code, the importer can elect to use a special “offset” mechanism for ‘paying’ import VAT for certain qualified goods, which is intended to effectively eliminate the cash outflow for import VAT and is often viewed as an “exemption” in practice. This “offset” mechanism in general practice allows the amount of import VAT to be reflected in the VAT declaration as output VAT and, at the same time, included as input VAT available for offset (without actually having been paid). The “offset” mechanism is subject to strict statutory requirements and applies to import VAT, while any applicable import customs duties would still be due.

Contribution of goods to the charter capital of a Kazakhstan legal entity, in and of itself, is exempt from VAT. However, the importation of goods, which are intended to be contributed to the charter capital, is not. In other words, a taxpayer will have to pay (import) VAT at customs upon importation of goods, but when the taxpayer actually contributes those goods to the charter capital of a company, no (output) VAT should apply.

Goods imported to Kazakhstan from third countries other than CU member-states may be placed under an inward processing (the “**IPR**”) customs regime under the following conditions. Under the IPR customs regime, goods (e.g. raw materials) imported for processing are eligible for full exemption from the customs duty and import VAT, provided that the processed/finished goods are subsequently moved from Kazakhstan out of the Customs Union within a deadline agreed with the customs authorities. There is no export customs duty on export of finished goods from Kazakhstan.

### ***10.6 Documentation and Procedures***

There is no strict established procedure for registering entities importing or exporting goods to/from the territory of the Customs Union for customs clearance purposes.

However CU legislation establishes a comprehensive list of documents required for customs clearance purposes. In practice, the set of documents to be submitted to the customs authorities may vary depending on the character of the imported/exported commodities, conditions of the transactions and other factors.

The customs value of imported goods is declared based on the value substantiated by the appropriate supporting documents. The list of documents necessary to support the declared information is relatively standard and typically includes contracts, invoices, shipping documents, certificates of origin of goods, necessary licenses and permits, conformity certificates, any other documents depending on the specific facts and circumstances.

The customs authorities carry out strict control over the correctness and reasonableness of determining the customs value and method applied.

### ***10.7 Warehousing and Storage***

All imported goods are generally required to be placed within a bonded warehouse, until the moment when the goods are customs cleared under any of the available customs regimes.

There is also a special “customs warehouse” customs regime, which is a specially identified and constructed premises or place intended for the storage of goods in accordance with the “customs warehouse” customs regime. Customs warehouses may be of an open type, which are available for use by any persons authorized with regard to the goods and of a closed type, which are intended for storage of goods belonging to the owner of the warehouse or to certain persons specified by the owner of the warehouse. The period for storage of goods at the “customs warehouse” is determined by the person who places the goods into the “customs warehouse”. However, this period cannot exceed 3 years from the date when the goods were placed under the “customs warehouse” customs regime.

### ***10.8 Re-Exports***

The re-export of goods is the customs regime whereby goods, which were previously imported into the customs territory of the Customs Union, are exported from the Customs Union, exempt from or with reimbursement of the customs import duties and taxes that were originally paid and without measures of non-tariff regulation being applied to them, except for measures in the area of export control.

Goods may be re-exported under either of the following conditions:

- export of goods which are stored at places of temporary storage (bonded warehouse) until they are placed under a certain customs regime (subject to certain statutory conditions);
- export of goods previously declared under the customs regime for release into free circulation, where the goods are returned to the supplier or another person in accordance with the supplier’s instructions due to defects or non-compliance with the requirements of a given foreign economic transaction (subject to certain statutory conditions);
- export of foreign goods, which were previously placed under the customs regimes of processing of goods in the customs territory or processing of goods for free circulation, provided that these goods have not undergone processing operations;
- export of foreign goods, which were previously placed under the customs regimes of a customs warehouse, free warehouse, free customs zone.

## **11 ACCOUNTING AND AUDITING REQUIREMENTS**

### **11.1 Accounting**

According to the Law of the Republic of Kazakhstan dated 28 February 2007 No. 234-III on Accounting and Financial Reporting (as amended, the “**Accounting Law**”), the following entities must prepare financial reports in accordance with IFRS:

- Large business entities (legal entities with at least 250 average annual number of employees or total annual value of assets more than approximately USD 3,525,000);
- Public interest organizations, which are:
  - financial organizations, except for legal entities engaged exclusively in the activity of organizing exchange operations with foreign currency;
  - joint stock companies, except for non-commercial companies
  - subsurface users except for those producing common mineral resources; and
  - organizations, which have a state stake in their charter capital, as well as state enterprises established to manage or established with the right to manage government property.

The financial statements are the following:

- balance sheet;
- income statement (or statement of comprehensive income for IFRS reporters);
- cash flow statement;
- statement of changes in equity;
- explanatory notes.

Other legal entities including the branches of non-resident legal entities and individual entrepreneurs, at their discretion, may prepare financial reports in accordance with either IFRS or the national accounting standards, which generally refer to IFRS.

The Kazakhstan requirements for maintaining the accounting records and financial statements are as follows:

- Besides requirements of IFRS the Accounting Law mentions the following principles to be followed for accounting and financial reporting: accrual method and going concern assumption. The quality characteristics required for financial reporting are: understandability, relevance, reliability and comparability;
- Companies have to keep accounting records in either Kazakh or Russian languages.
- There are no strict restrictions related to the chart of accounts and the company can use either one established by the state authorities or developed internally, or both. There is a chart of accounts issued by the Ministry of Finance to assist implementation of IFRS which many companies use.
- Presentation currency for financial statements is KZT. Companies often also maintain parallel sets of records with currency other than KZT.
- The reporting period for annual financial statements is the calendar year. But the company can have its own reporting period for the financial statements issued for internal purposes.
- Issued documents, such as issued invoices, documents on the good/services purchase confirmation, should be signed and stamped by authorized responsible persons.
- The chief executive of the accounting service (the “**Chief Accountant**”) is the employee who ensures maintenance of the accounting, making and presentation of the financial reporting, and formation of the accounting policy.
- A Chief Accountant position for the public interest organization should be filled by a qualified professional accountant.

The financial statements should be presented to:

- founders (participants) in accordance with the foundation documents;
- state statistics bodies of the Republic of Kazakhstan; and
- state control and supervision bodies of the Republic of Kazakhstan in accordance with their competence.

The companies should present annual financial statements not later than 30 April of the year following the reporting period.

Public interest organizations (as defined by the Accounting Law), except for financial organizations, are obliged to publish annual financial reports in periodical printed mass-media in accordance with the list and forms approved by the Ministry of Finance. These forms are developed based on IFRS requirements and include: Statement of Financial Position; Statement of Comprehensive Income; Cash Flow Statement; and Statement of Changes in Equity.

Financial organizations must publish annual financial reports in accordance with the procedure established by the laws of the Republic of Kazakhstan.

In addition public interest organizations are obliged to publish their annual financial statements along with the auditor's report on a special website depositary maintained by the Ministry of Finance.

### ***11.2 Audit Requirements***

Under Kazakhstan legislation, certain companies must undergo an annual statutory audit. Such companies include, among others:

- banks, insurance companies, pension funds and other financial institutions,
- joint stock companies,
- natural monopolies,
- companies operating under an investment contract concluded with Kazakhstan, and
- subsurface users.

The Law of the Republic of Kazakhstan dated 20 November 1998 No.304-I On Audit Activity stipulates that statutory audits of financial statements should be conducted in accordance with international auditing standards.

Any audit company of the client's choice can perform this audit, provided the audit company is compliant with certain qualification requirements. There are additional qualification requirements for audit companies to perform audits of financial organizations and state companies. In addition KASE has certain qualification requirements for audit companies which are allowed to perform audits of companies whose instruments are listed on KASE.

## ***12 TAX SYSTEM AND ADMINISTRATION***

### ***12.1 Tax System***

The tax service bodies consist of the authorized state body – the Tax Committee of the Ministry of Finance - and other tax offices, which include regional and oblast tax departments, tax departments of Almaty and Astana cities and tax offices for districts.

### ***12.2 Direct and Indirect Tax Burden***

All taxes are subdivided into direct and indirect. VAT and excise tax are recognized as indirect taxes.

### ***12.3 Principal Taxes***

Principal taxes include:

- Corporate Income Tax (the “**CIT**”), including branch profits tax, capital gains tax and withholding taxes;
- Individual Income Tax (the “**IIT**”);
- Value-Added Tax (the “**VAT**”);
- Excise Tax;
- Rent tax on exported crude oil and natural gas liquids;
- Taxes and special payments of subsurface users;
- Social tax;
- Land tax;
- Tax on transport vehicles; and
- Property tax.

#### **12.4 Legislative Framework**

Current tax legislation in Kazakhstan consists of the Code of the Republic of Kazakhstan dated 10 December 2008 No. 99-IV on Taxes and other Obligatory Payments to the Budget (as amended, the “**Tax Code**”) in effect from 1 January 2009, the Law on Introduction of the 2009 Tax Code (which sets out certain transition clauses, which come into force at different points in time during 2009 – 2015) and other normative legislative acts. Letters of the Tax Committee of the Ministry of Finance serve as interpretative guidance but do not have full legal force and are not binding.

The Tax Code imposes national and local taxes and other payments (duties and fees) and regulates the administration of taxes in Kazakhstan. The inclusion of tax matters, including the granting of exemptions or privileges, in other legislation is specifically prohibited.

The Code of the Republic of Kazakhstan dated 30 January 2001 No. 155-II on Administrative Violations deals with administrative fines for non-compliance with tax regulations. Kazakhstan also applies the concept of criminal liability with respect to taxes. A criminal violation may occur when the tax amount misreported by legal entities exceeds 20,000 MCI (currently, approximately USD 216,000).

A salient feature of the Kazakhstan tax system is that the major challenges often lie in the administration of the regulations by the authorities rather than in the legislation itself.

#### **12.5 Income Tax**

##### **Concepts of Income Tax**

Corporate income tax is calculated at a rate of 20% applied to a taxable base, which is computed as aggregate annual income less allowed deductions. Generally, corporate income tax is payable via monthly installments (advance payments). In addition to corporate income tax, non-residents operating in Kazakhstan through a permanent establishment are also subject to a branch profits tax at the statutory rate of 15% (reducible to 10% or 5% under an

applicable double tax treaty). The taxable base for branch profits tax purposes is the after-tax profits (i.e., aggregate annual income, less allowed deductions, less 20% corporate income tax). The branch profits tax may be viewed as an equivalent to a dividend withholding tax; however, it is assessed and payable annually, irrespective of whether a distribution of profits has been made.

On the contrary, dividend withholding tax, which is applied to Kazakhstan legal entities making distribution of profits to its foreign parents, becomes due only upon actual distribution of dividends. The dividend withholding tax rate is 15%; however, it may be reducible to 10% or 5% under an applicable double tax treaty or even exempt after a 3-year holding period. Dividends paid by a Kazakhstan subsidiary to its Kazakhstan parent (in-country dividends) are exempt from dividend withholding tax.

### ***Classes of Taxpayer***

Resident legal entities of Kazakhstan, as well as non-resident legal entities that carry out activities in Kazakhstan through a permanent establishment are recognized as corporate income taxpayers. Non-residents that receive income from Kazakhstan sources without creating a permanent establishment are generally subject to withholding taxes.

### ***Taxable Income***

Taxable income for corporate income tax purposes is defined as aggregate annual income less allowed deductions.

Kazakhstan tax residents are exempt from corporate income tax in respect of in-bound and in-country dividends received.

## ***12.6 Income received in countries with favorable taxation***

Under “the controlled foreign companies” (the “CFC”) regime a Kazakhstan tax resident may be taxed on a portion of the undistributed profits of certain non-resident companies that are registered in a country with favorable taxation and in which such Kazakhstan tax resident has an interest. There is a special list of

“black-listed” jurisdictions approved by the Government of Kazakhstan for which CFC rules would apply.

### ***12.7 Tax Treaties***

Kazakhstan has currently concluded double tax treaties with 44 countries and an additional 2 double tax treaties with Luxembourg and the United Arab Emirates have been signed, but not ratified yet. For the list of effective double tax treaties, please see Appendix C.

### ***12.8 Tax Returns and Payments***

Tax reports are compiled by the taxpayer, tax agent or their representatives. Tax reports should be compiled on paper or electronic form in the state (Kazakh) or Russian language.

### ***12.9 Assessments***

Upon completion of a tax audit (see below), the tax authorities issue a tax audit “act”. If no violation of the tax legislation is discovered, an appropriate note is made in the tax audit act.

On the basis of the results recorded in the tax audit act, the tax authorities issue a “notification” on the assessed amounts of taxes and other obligatory payments to the budget and penalty interest.

### ***12.10 Appeals***

Taxpayers have the right to appeal acts of the tax service bodies to a higher level tax service body or the court.

### **12.11 Withholding Taxes**

Non-residents which do not have a permanent establishment in Kazakhstan are subject to Kazakhstan withholding tax on Kazakhstan source income. This is broadly defined to include any income from activity in relation to Kazakhstan. Non-residents' income from management, financial, consultancy, legal and auditing services, as well as any services rendered or goods sold/work performed to Kazakhstan taxpayers by entities resident in a "state with privileged taxation" (otherwise referred to as "**black-listed**" jurisdiction) are also recognized as Kazakhstan source income, regardless of the place where the services are provided. Subject to certain conditions, income from personnel secondment services is not considered an income from activity in Kazakhstan.

Interest, royalties and dividends are subject to 15% withholding tax, potentially reducible to between 10% and 5% under most double tax treaties provided that beneficial ownership criteria and other administrative requirements (tax residence certificate, etc.) are met. Other Kazakhstan-sourced income (including income from services and management fees) is taxed at 20%, unless a relevant double tax treaty provides otherwise.

Dividends paid by a Kazakhstan subsidiary to its Kazakhstan parent company (in-country dividends) are exempt from dividend withholding tax. Furthermore, dividends paid to a non-resident parent company are also potentially exempt provided certain conditions are met.

Kazakhstan applies an extra-territorial capital gain tax regime (i.e. if a non – resident sells its shares in a Kazakhstan legal entity to another non-resident it might be subject to taxation in Kazakhstan). The capital gains realized by a non-resident on the sale of a Kazakhstan subsidiary not involved in subsurface use activities are exempt from Kazakhstan taxation provided certain conditions are met. Disposal of shares in Kazakhstan subsidiaries involved in subsurface use activities is subject to 15% Kazakhstan withholding tax on capital gains and 20% in certain cases.

There is an exemption from taxation of shares listed on domestic and foreign stock exchanges and sold via the open auction method. This could apply

provided that the shares are officially listed on the stock exchange on the day of the sale. An applicable double tax treaty may provide a capital gain tax exemption, which can be utilized via the tax refund.

Any income realized by non-residents registered/located in a “black-listed” jurisdiction is subject to special tax rules. The withholding tax rate is generally 20% unless the relevant double tax treaty provides otherwise.

Interest on bonds listed on the Kazakhstan Stock Exchange (KASE) is generally exempt from withholding tax in Kazakhstan

## ***13 TAXATION OF CORPORATIONS***

### ***13.1 Corporate Tax System***

Corporate income tax applies to the taxable income of Kazakhstan legal entities and branches of foreign legal entities.

Branches of foreign legal entities are taxed on their Kazakhstan source income while Kazakhstan legal entities are taxed on their worldwide income. The net after-tax profit of branches of foreign legal entities is subject to 15% branch profits tax, potentially reducible to 5% or 10% under the most double tax treaties.

### ***13.2 Incentives***

The tax legislation currently envisages the following tax incentives:

- investment incentives;
- tax holidays for special economic zones.

***Investment incentives*** are available only to certain Kazakhstan legal entities that fit certain criteria and possess incentive objects. Generally, the investment incentives allow to fully deduct for corporate income tax purposes the cost of the investment objects and the cost associated with their reconstruction and modernization either at once or within the first 3 years of their use.

Under the Law on Investments, incentives are granted under an investment contract between the Government and companies and focus on priority sectors of the economy, as determined by the Government.

Please see Section 3.2 for information on ***special economic zones*** established in Kazakhstan.

In order to enjoy the incentives available in special economic zones the legal entity should meet the following requirements:

- registered by the tax authorities in the territories of special economic zones;
- have no structural subdivisions beyond the boundaries of the territories of special economic zones;
- 90% of aggregate annual income constitutes income earned from activities in the special economic zone consistent with the objectives of the special economic zone's formation.

The general incentives available for legal entities in special economic zones are:

- CIT – 100% reduction;
- Land tax – 0% rate;
- Property tax – 0% rate.

### ***13.3 Taxable Income***

Aggregate annual income comprises all income received by a legal entity, whether in cash or in kind, including:

- income from sales;
- capital gains;
- passive income, including interest but excluding certain types of dividends;
- income from derivatives;
- income received free of charge;
- income from carrying out joint operations;
- winnings (any type of income in cash and in kind received from contests, lotteries, etc.);
- income from written off debts;
- income from doubtful claims.

### ***13.4 Deductibility of Expenses***

Allowable deductions generally include expenses associated with the earning of aggregate annual income. Certain expenses are deductible within established limits.

***Business Trip Expenses.*** Actual accommodation and travel expenses related to business trips (including expenses for transportation, accommodation, reservations, entry visa and per diems) that are reimbursed by the employer can be deducted from aggregate annual income of a taxpayer.

***Interest Expense.*** Interest paid to unrelated third parties and credit partnerships created in Kazakhstan are deducted in full. Deduction of interest paid to related parties or to unrelated parties under related parties' guarantees or warranties or to parties registered in a "black-listed" jurisdiction depends on the borrower's capital structure such that deductible interest will be limited with reference to an "acceptable" proportion of debt to equity (7:1 for a financial institution, 4:1 for all other entities).

***Doubtful Claims.*** Amounts of receivables from Kazakhstan legal entities, individual entrepreneurs and non-residents operating through a permanent establishment for the supply of goods or services (works) that were not paid within three years are to be recognized as doubtful claims. Such claims could be deducted in full by a taxpayer, provided that (i) these receivables were reflected in the books of a taxpayer and (ii) proper supporting documents are in place.

***Depreciation.*** Depreciation, for tax purposes, is calculated using the declining balance method. For depreciation calculation purposes, taxpayers are required to allocate all assets between relevant groups (the Tax Code envisages four tax groups).

Depreciation assessments for each group is computed by way of applying the relevant depreciation rates, but not higher than the maximum rate, to the value balance of the group at the end of the tax period. Current annual maximum depreciation rates vary from 10% to 40%.

For fixed assets that are introduced into operations in Kazakhstan for the first time a subsurface user can apply double depreciation rates, but only for the first tax period provided that those fixed assets are used for earning aggregate annual income for at least three years. During the first tax period, these assets should be accounted for in a separate fixed asset group.

### **13.5 Related Party Transactions**

On 1 January 2009 the Law of the Republic of Kazakhstan dated 5 July 2008 No. 67-IV on Transfer Pricing (as amended, the “**Transfer Pricing Law**”) was introduced in Kazakhstan. According to the provisions of the Transfer Pricing Law both customs and tax authorities have the right to monitor and adjust prices used in cross-border transactions when prices are perceived to deviate from market prices even if those transaction participants are unrelated parties (It should be noted that the new Transfer Pricing Law is unclear on definitions of related and unrelated parties). If the authorities adjust prices, the re-assessed liability will include taxes, duties, penalty interest and fines. Transfer pricing rules impact the following transactions:

- international commercial transactions;
- domestic transactions that directly relate to international commercial operations where:
  - a) the sale relates to a subsurface use contract;
  - b) one of the parties has tax preferences;
  - c) one of the parties has losses for two years prior to the year of the transaction.

Under its monitoring procedures for international transactions the Kazakhstan government has issued a list of goods, works and services which are subject to transfer pricing control. This list includes, among other items, crude oil and petroleum products. That said, transfer pricing may apply to goods and services that are not specifically included in the government list.

### ***13.6 Foreign Exchange***

In general, for both accounting and tax purposes, assets and liabilities in foreign currency must be translated into KZT at the official exchange rate of the National Bank on the date on which the transaction is carried out.

Kazakhstan follows the financial accounting principles for the tax treatment of foreign exchange gains/losses. Therefore, any foreign exchange gain recognized in accounting is included in taxable income and vice versa, any foreign exchange loss recognized is deductible.

### ***13.7 Tax Computations***

Corporate income tax is calculated at a rate of 20% of aggregate taxable annual income less allowed deductions.

Corporate tax is payable in advance equal installments on a monthly basis, by the 25th of each month. Such advance installments are calculated on the basis of estimated income for the reporting year, which must be declared at first not later than 20 January of the reporting year. Certain entities are exempt from calculating and paying advance corporate income tax installments.

If the actual corporate income tax calculated is less than advance payments made during the year, the excess tax payments may be offset against other taxes and non-tax liabilities to the budget (including any relevant fines and penalties), or against future tax payments. In the absence of any liabilities, the taxpayer may apply for a cash refund of tax overpayments.

Net tax losses accumulated prior to 1 January 2009 may be carried forward for up to three years. Net tax losses accumulated after 1 January 2009 may be carried forward up to 10 years.

### ***13.8 Other Taxes***

***Excise Tax.*** Excise duties apply to the sale and importation of all types of spirit, alcohol products, tobacco, petrol/gasoline (excluding aviation fuel), diesel fuel,

cars, crude oil and natural gas condensate. Excise duty rates vary and are subject to frequent changes.

***Property Tax.*** Property tax is calculated at a rate of 1.5% of the average book value of taxable items as determined in accounting. Certain taxpayers are taxed at reduced tax rates. Property tax is paid in four installments during the reporting year with the final payment of the actual tax to be made by 10 April. The reporting requirements include the submission to the tax authorities of (i) the Calculation of current payments of property tax by 15 February of the current tax period; and (ii) Property Tax Declaration by 31 March of the year following the reporting year.

***Land Tax.*** The rate of land tax is contingent on the use of the land and the land quality rating set by the Government. The Tax Code sets different tax rates for various types of land for legal entities and individuals. Land tax is paid in four installments during the reporting year with the final payment of the actual tax to be made by 10 April. The reporting requirements include the submission to the tax authorities of (i) the Calculation of current payments of land tax by 15 February of the current tax period; and (ii) Land Tax Declaration by 31 March of the year following the reporting year.

***Vehicle Tax.*** The tax rate depends on the type of the vehicle and the engine size. Vehicle tax payable by legal entities is paid annually not later than 5 July of the current tax period. The reporting requirements include the submission to the tax authorities of (i) the Calculation of current payments of vehicle tax by 5 July of the current tax period; and (ii) Vehicle Tax Declaration by the 31 March of the year following the reporting year.

***Environmental Tax.*** Kazakhstan has a levy for the pollution of the environment which depends on industry type and the region of activity. All environmental levies rates are determined on the basis of the monthly calculation index established for the appropriate financial year and may be increased by local authorities.

### ***13.9 Taxation of Business Entities***

Kazakhstan does not have consolidation provisions for tax purposes. The government retains the right to tax branches and representative offices of foreign legal entities as separate taxpayers without creation of a separate legal entity. Income received by each partner in consortia and entities operating under joint operation agreements is assessed for taxation separately with respect to the individual participant's share and taxed only at the participant level. Thus, consortia and entities operating under joint operation agreements are not taxpayers in their own right and income and expenses flow through to the participant entities for tax reporting purposes. Kazakhstan limited liability partnerships are taxed as corporations.

Please see Appendix D for more details on advantages and disadvantages of a branch and a KLE.

### ***13.10 Holding Companies***

Kazakhstan tax residents are exempt from corporate income tax in respect of inbound and in-country dividends.

### ***13.11 Subsurface Taxation***

#### ***Tax Regime***

The tax regime envisages the use of one model where the subsurface user computes the tax obligations under the tax legislation in effect at the time when such tax obligation arises.

#### ***Special Taxes***

All subsurface users carrying out activities in Kazakhstan are required to pay special taxes and other obligatory payments. These include: signature and commercial discovery bonuses, payment for historical costs, mineral production tax, excess profits tax, rent tax on exported crude oil and excise taxes.

Although the list of special payments and taxes applicable to subsurface users is the same, the economics of a project generally determine amounts of applicable bonuses.

Payment for historical costs is designed to recover historical costs previously incurred by the Government for exploration and development of reserves of mineral resources.

### ***Mineral Production Tax***

Mineral production tax (the “**MPT**”) is levied upon the cost of produced volumes of minerals. Currently, the rates established for crude oil and gas condensate range from 5% to 18%. The current rates for other minerals are fixed depending on the type of mineral. MPT rates apply to the value of produced mineral, while value is based on the world price of minerals. For hydrocarbons, rates can be reduced by 50% if they are supplied to domestic refineries on the basis of a sale/purchase agreement or tolling agreement.

### ***Excess Profits Tax***

Subsurface users are liable to pay excess profits tax on net income for a reporting period. However, excess profits tax applies to that part of net income exceeding 25% of deductions. In addition to general corporate deductions, it is also allowed to deduct cost of fixed assets and capital repair. Excess profits tax is based on a progressive sliding scale where the maximum tax rate of 60% applies to amounts of net income exceeding 70% of deductions.

### ***Rent Tax***

The rent tax on exported crude oil and gas condensate applies to legal entities and individuals selling crude oil and gas condensate for export (except for certain subsurface users that concluded production sharing agreements prior to 1 January 2009). It also applies to exporters of coal. Similar to the mineral production tax, the taxable base for crude oil is determined based on “the world price” regardless of adjustments for quality discounts and certain transportation costs. For coal, the taxable base is calculated on the basis of the actual selling price. Rent tax rates for export of crude oil and gas condensate are determined by reference to the “world price” of exported crude oil and vary from 7% if the

market price is above USD 40 per barrel, to 32% if the market price exceeds USD 200 per barrel. Rent tax rate for export of coal is 2.1%.

### ***Special Provisions***

Upon transfer of hydrocarbons for processing on the basis of a tolling agreement or transfer of minerals for primary processing within the same or separate legal entity, revenues for corporate income tax and excess profits tax purposes are determined in a specific way. Revenues are computed on the basis of production cost, including primary processing, determined under IFRS increased by a 20% mark up. The same approach is applied to define the taxable base for the mineral production tax in similar cases.

### ***Deductions***

Exploration and development expenditures incurred by subsurface users prior to commercial production (including geological studies, geological prospecting, exploration, appraisal and development of natural resources, general and administrative costs, signature and commercial discovery bonus payments, expenditures for the purchase of fixed and intangible assets and other tax deductible expenses, except for mineral selling expenses) should be deductible from aggregate annual income through depreciation charges. These expenditures form a separate group with a maximum depreciation rate for tax purposes of 25%. The pool of capital expenses accumulated in the course of the Exploration Contract is carried over to the Production Contract for further depreciation and deduction for CIT purposes.

The same depreciation procedure applies to expenditures for the acquisition of intangible assets incurred by a subsurface user in relation to the acquisition of subsurface rights.

### ***Losses***

Subject to certain restrictions, losses incurred from operations under subsurface use contracts may be carried forward for up to 10 years.

### ***Ring Fencing***

Ring fencing provisions apply to prevent multiple contract areas as well as non-contractual activities from being combined for the purposes of applying the tax regime under a subsurface use contract.

### ***Stability of Tax Regime***

The tax stability clauses of production sharing agreements (“**PSAs**”) signed prior to 1 January 2009 and contracts signed by the President of Kazakhstan will remain intact for the life of the contract. Generally, PSAs were used prior to 2009 for major oil and gas fields such as Kashagan, Karachaganak and certain offshore projects in the Kazakhstan sector of the Caspian Sea. However, the stability of PSA tax regimes still remains an issue as the Kazakhstan tax authorities continue to encourage subsurface users with PSAs to move from the stabilized tax regime to the current unstabilized tax regime.

## ***14 TAXATION OF INDIVIDUALS***

### ***14.1 Individual Income Tax***

#### ***Taxpayers***

Payers of individual income tax in Kazakhstan are all individuals having taxable income.

#### ***Objects of Taxation***

There are 2 types of income subject to individual income tax in Kazakhstan:

1. income taxable at source of payment:
  - income of an employee;
  - income of an individual from a Tax Agent<sup>15</sup>;
  - income in the form of dividends, interest and winnings;
  - pension payments from pension funds;
  - income from accumulative insurance agreements;
  - scholarship.
2. income non-taxable at source of payment:
  - property income;
  - taxable income of the individual entrepreneur;
  - income of attorneys and private notaries;
  - income derived from sources outside of the Republic of Kazakhstan.

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<sup>15</sup> Tax agent is an individual entrepreneur or legal entity that carries responsibility to calculate, withhold and transfer taxes to the budget of the Republic of Kazakhstan

### ***Scope of Taxation***

Kazakhstan tax non-residents are taxed on their Kazakhstan source income only. It is important to note that any income received for the performance of duties in Kazakhstan irrespective of actual payroll location is considered to be a Kazakhstan source, e.g. a portion of remuneration that is actually paid by a foreign company, including various allowances/in-kind benefits (e.g. housing, schooling, other assignment related costs, etc.).

Kazakhstan tax residents are subject to tax on their worldwide income (i.e., received both from domestic and foreign sources).

### ***Tax Rates***

All personal income is generally subject to taxation in Kazakhstan at the rate of 10%, except for dividends which are taxed at 5%. However, some personal income of Kazakhstan tax non-residents may be subject to a 20% individual income tax rate.

### ***Tax Residents***

In order to become a Kazakhstan tax resident, an individual must meet the criteria of at least one of the following tests:

- Physical presence test: Individuals who spend 183 calendar days or more in Kazakhstan in any consecutive twelve month period ending in the reporting tax year;

Irrespective of the nature of stay in Kazakhstan (for example, work, business trips or holidays) each day or part day of physical presence counts towards the 183 day threshold for attaining tax residence in Kazakhstan.

- Center of vital interest test: Individuals who spend less than 183 calendar days in Kazakhstan will be treated as Kazakhstan tax resident, if all of the below criteria are simultaneously met:
  1. The individual holds Kazakhstan citizenship or residence permit;
  2. Family and/or close relatives of the individual are living in Kazakhstan;

3. The individual and/or his family members has real estate in Kazakhstan in accordance with ownership rights (or in accordance with other basis), which is available to him/them to stay in Kazakhstan at any time.

An individual's immigration status does not immediately drive their tax status.

### ***Double Tax Treaties***

If a foreigner becomes a Kazakhstan tax resident and at the same time remains a tax resident in another country under its domestic tax law, a double tax treaty (the “**DTT**”) should be looked at to determine the final tax residency status (tie-breaker clause) and whether the exemptions under the DTT may be applied. Kazakhstan has double tax treaties with 44 countries (refer to Appendix C).

### ***Other exceptions for non-resident individuals***

Certain types of income of non-resident individuals, who spend less than 183 days in Kazakhstan and are employed by non-resident legal entities with no permanent establishment in Kazakhstan, should not be subject to Kazakhstan individual income tax.

### ***Income received in countries with favorable taxation***

Under the CFC regime, a Kazakhstan tax resident - individual may be taxed on a proportion of the undistributed profits of certain non-resident companies that are registered in a country with favorable taxation and in which such Kazakhstan tax resident has an interest. There is a special list of “black-listed” jurisdictions approved by the Government of Kazakhstan for which CFC rules would apply.

## ***14.2 Employment income***

### ***Employee's gross income***

An employee's income (irrespective of his/her residency status), which is subject to taxation in Kazakhstan, is any kind of income received by an employee from an employer in cash or in kind such as: accommodation provided by an employer,

benefits, compensation, personal use of company provided car, reimbursable business trip expenses in excess of statutory limits and others.

### ***Deductions***

There are several tax deductions available in Kazakhstan. However, most of them are insignificant and are applied by Kazakhstan employers during the calculation of the employee's taxable income. These deductions are:

- amount of Minimum Monthly Wage (the “**MMW**”)<sup>16</sup> that is established by the Law on Republican Budget on an annual basis;
- Obligatory and voluntary pension contributions;
- Insurance premiums payable by individuals in their own favor under accumulative insurance agreements;
- Amounts aimed at repayment of interest on housing loan provided to a resident by housing construction savings banks;
- Expenses on medical services with certain limitations.

The above deductions do not apply on incomes of Kazakhstan tax non-resident individuals.

### ***Business Deductions***

There are no business deductions allowed for employees. An individual may claim business deductions if registered as an entrepreneur.

## ***14.3 Personal income***

### ***Interest***

In accordance with the provisions of Kazakhstan tax legislation, interest income received from foreign banks is taxable in Kazakhstan irrespective of the level of interest rate. Interest income received from licensed Kazakhstan banks is exempt from taxation in Kazakhstan.

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<sup>16</sup> MMW for 2012 is KZT 17,439

## ***Doing Business Guide dated 1 October 2012***

Interest on debt securities, government securities and agency bonds is also exempt from taxation in Kazakhstan.

### ***Dividends***

Dividend income can be exempt from taxation in Kazakhstan if one of the following conditions is met:

1. Dividends and interest on the securities listed on the date of accrual of dividends and interest on the stock exchange operating on the territory of the Republic of Kazakhstan;
2. If the following conditions are met simultaneously:
  - on a date of dividends accrual taxpayers owns shares (in relation to which dividends are paid) more than 3 years;
  - legal entity paying the dividends is not regarded as a subsurface user for the period in relation to which dividends are accrued;
  - more than 50% of the legal entity paying dividends is not owned by subsurface user(s) on the date of payment of dividends.

### ***Capital gains***

Capital gains associated with the disposal of the following securities can be exempt from taxation in Kazakhstan:

- government securities;
- agency bonds;
- securities listed at the day of disposal on the stock exchange operating in Kazakhstan (if sold by the method of advertised bidding on such stock exchange);
- if all of the following conditions are met:
  - On the date of sale taxpayer owns shares more than 3 years;
  - The legal entity, in which shares are sold, is not regarded as a subsurface user;
  - More than 50% of the legal entity, in which shares are sold, is not owned by subsurface user(s).

***Rental income***

When calculating taxable income associated with renting out or leasing a property, the taxpayer can exclude maintenance and repair costs or reimbursement of such costs associated with such property.

***Sale of property***

Income derived from the sale of property that is located in Kazakhstan and owned for 1 year or more is fully exempt from taxation in Kazakhstan (excluding sale of shares). There are currently no reporting requirements.

***14.4 Other Taxes***

***Social Tax***

Social tax is payable by employers in respect of their employees (both locals and expatriates) at 11% on top of the employee's gross remuneration.

***Social Security Taxes***

Obligatory social insurance contributions are payable by employers at the rate of 5% to the State pension center on pension payments. Social obligatory insurance contributions are capped at 5% of 10 MMW per month and are deductible from social tax. Only Kazakhstan citizens and foreigners holding a residence permit in Kazakhstan are subject to obligatory social insurance.

***Obligatory Pension Contributions***

Obligatory pension contributions are withheld at a rate of 10% out of employees' gross income and paid to the State Pension Center of pension payments. The gross income subject to obligatory pension contributions purposes is capped at 75-times of MMW per employee per month. Only Kazakhstan citizens and foreigners holding a residence permit in Kazakhstan are subject to pension contributions.

***Wealth Tax***

There is no wealth tax in Kazakhstan.

***Local Taxes***

There are no additional local taxes on income of individuals.

***14.5 Tax Administration***

***Tax Reporting***

A Kazakhstan legal entity acting as a tax agent is obliged to file quarterly tax reports on income paid at source and taxes paid in respect of its employees by 15 May, 15 August, 15 November and 15 February.

There is also a self-assessment method, whereby all taxpayers having taxable income (in the absence of a tax agent) are required to submit individual tax returns by 31 March of the year following the reporting year.

***Payment of Tax***

Tax agents withhold individual income tax not later than the date of income payment. Tax is due prior to the 25th day of the month following the month of income payment.

Under the self-assessment method the individual income tax is due by 10 April of the year following the reporting one.

***Foreign Tax Credits***

In order to claim a tax credit an individual must have (by 31 March) a legalized “Certificate of income received from sources outside of Kazakhstan and taxes paid”. This document must be issued and certified by foreign tax authorities and a notarized translation of this Certificate into Russian or Kazakh languages must be provided.

***14.6 Secondment***

If properly structured, personnel secondment services should not lead the foreign entity to the risk of creating a permanent establishment in Kazakhstan. However under secondment arrangements, a Kazakhstan legal entity, to which personnel is seconded, is generally expected to pay / withhold all applicable Kazakhstan payroll taxes from remuneration of such personnel.

## ***15 VALUE ADDED TAX (VAT)***

### ***15.1 Introduction***

All taxpayers registered for VAT purposes are required to charge VAT on their taxable supply and calculate and report their VAT obligations.

The VAT rate is 12%.

Taxpayers are required to register for Kazakhstan VAT purposes if their taxable supply in the preceding 12 months exceeded 30,000 MCI (currently, approximately USD 324,500). Even if an entity is not required to register for VAT purposes, it may still voluntarily do so by submitting an application to the appropriate tax committee.

On 1 July 2010 the new Customs Code of the Republic of Kazakhstan and amended Tax Code were enacted, which introduced new VAT rules. They apply for import/export of goods and provision of services within the territory of the Customs Union. The Customs Union members are Russia, Kazakhstan and Belarus.

### ***15.2 Scope of VAT***

Taxable supplies of goods include:

- transfers of title to goods, including the sale, exchange, contribution to the authorized capital and payment of salary (wage) in kind;
- transfers of goods under a finance lease contract; and
- transfers of goods by one division of a legal entity to another, provided that both divisions are registered as separate taxable persons.

Taxable supplies of services are any supplies of services, both chargeable and non-chargeable, as well as the following:

- transfers of copyright or intellectual property, including those contributed to a

- company's authorized capital;
- services performed by an employer for the benefit of an employee as a form of wages; and
- services supplied between two or more divisions within one legal entity, provided that the divisions are registered as separate taxable persons.

The following items are not treated as taxable transactions:

- transfers of goods with a value not exceeding 2 MCI for advertising purposes;
- provision of reusable packaging materials; and
- export of goods for exhibitions and other similar activities, under the customs regime for temporary export of goods.

Goods and services are subject to VAT if they are deemed to be supplied in Kazakhstan under the place of supply rules. According to these rules, transactions are deemed to be supplied:

- in respect of goods:
  - a) if the goods are transported by the supplier, customer or third party, at the place where transport of the goods begins; and
  - b) in all other cases, at the place where the goods are transferred to the customer; and
- in respect of services:
  - a) in the case of services relating to immovable property, at the place where the immovable property is located;
  - b) in the case of services relating to movable goods, at the place where the services are actually performed (these services consist of assembly, installation and repairs).
  - c) in the case of services in the sphere of culture, art, education, physical training or sports, at the place where the services are actually performed;
  - d) in the case of the following services, at the place where the recipient (buyer) of the services has established his place of business:
    - the transfer of rights to intellectual property;
    - consulting, auditing, engineering, legal, accounting, advertising and

- information processing services;
- hiring out of staff;
- leasing of movable property (excluding vehicles);
- telecommunications services;
- tourist services; and
- intermediary services specifically relating to the above categories of services.

- e) in all other cases, at the place where the service provider has established its place of business.

If a service is supplementary to another service, the place of supply is determined as the place of the latter.

The place of supply for goods on the territory of the Customs Union is determined similar to the rules for Kazakhstan, described above. The place of supply for services has the following differences:

- a) services relating to movable goods does not include:
- renting, leasing and granting transport vehicles;
- b) services, at the place where the recipient of the services has established its place of business does not include:
- telecommunications services;
  - tourist services.

Import from the Customs Union is subject to a regular VAT rate, which is paid and reported to Kazakhstan tax authorities on a monthly basis.

### ***15.3 Zero-Rating***

Turnovers taxable at the zero rate include:

- export sales of goods;
- international transportation services;

- sales of goods in the territory of special economic zones under certain conditions.

#### ***15.4 Exempt Supplies***

Among others, the Tax Code provides for the following turnovers and import exempt from VAT:

- turnovers associated with residential buildings;
- qualified financial services;
- transfers of assets under finance leases;
- geological exploration and geological prospecting operations;
- turnovers from sales of work and services, associated with the implementation of infrastructure projects;
- sale of an enterprise;
- import of certain assets, the list of which is approved by the Government;
- turnovers associated with refined precious metals – gold or platinum manufactured from raw products of own production;
- turnovers from sales of goods, work, services associated with medical and veterinary activities, the list of which is approved by the Government.

#### ***15.5 Taxable Amount***

***VATable Supplies.*** Taxable supply includes any sale of goods, works and services and taxable import in Kazakhstan, unless the supply is specifically exempted or if the place of supply is outside Kazakhstan.

***VAT Offset.*** VAT paid on services and goods purchased by a VAT payer (i.e., input VAT) including reverse-charge VAT and VAT paid at customs should generally be available for offset (credit) when determining a taxpayer's VAT liability to the budget. However, offset is not available for VAT incurred for the purpose of supplies which are either exempted or which are deemed to be supplied outside of Kazakhstan.

***VAT Calculation and VAT Offset Carry-Forward.*** The VAT liability of a taxpayer is calculated as output VAT (i.e., VAT charged by a taxpayer) less input VAT (i.e., VAT paid by a taxpayer to its suppliers) in a reporting period.

The excess of input VAT over output VAT may generally be carried forward against future VAT liabilities. In practice refunds are difficult to obtain, although the rules do prescribe a procedure for refunds related to the export of goods, under certain conditions.

### ***15.6 Non-Deductible Input VAT***

The following input VAT is not allowed for offset if it is subject to payment in connection with the receipt of the following:

- goods (work, services) not related to entrepreneurial activity;
- goods (work, services) not related to taxable turnover;
- building (part of a building) for residential housing, except for buildings which are used as hotels;
- passenger cars which are purchased as fixed assets;
- goods (work, services) used for the repair of leased buildings for residential housing, except for the cases where repair costs are reimbursed by the lesser in accordance with the lease agreement and are taxable turnover of the lessee who made the repairs;
- assets (goods, work, services) received free of charge, in most cases;
- goods (work, services) on which invoices are written out with violation of requirements established in the Tax Code;
- goods (work, services) from invoices which cash payments exceeds 1,000 MCI (currently, approximately USD 10,820).

### ***15.7 VAT Incentives***

There are certain exemptions from import VAT. Please refer to Section 10.

### ***15.8 VAT Compliance***

The tax period for VAT is a quarter. Submission of the VAT Declaration is due by the 15<sup>th</sup> and VAT payment is due by 25<sup>th</sup> day of the second month following the reporting quarter.

***Reverse-Charge VAT.*** Under the “place of supply” rules, certain services are deemed to be supplied at the location of the business activity of the purchaser of services. These services include: consulting, audit, engineering, legal, accounting, advocacy, advertising and information processing services. Where such services are rendered by a non-resident not registered for VAT purposes in Kazakhstan, the Kazakhstan purchaser of these services is required to self assess and pay VAT to the budget via a “reverse charge” mechanism.

The obligation to pay the reverse-charge VAT will be on the Kazakhstan purchaser of the services, which should be allowed to offset the amount of the reverse-charge VAT paid, subject to the general offset procedure.

## ***Doing Business Guide dated 1 October 2012***

### ***APPENDIX A***

#### ***KEY STATISTICS AND MACROECONOMIC***

#### ***INDICATORS OF KAZAKHSTAN***

##### ***Republic of Kazakhstan***

|                                                |                                                                                |
|------------------------------------------------|--------------------------------------------------------------------------------|
| Total Area:                                    | 2,724,900 sq. km.                                                              |
| Estimated Population:                          | 16,836,711 (1 September 2012)                                                  |
| Capital (with population):                     | Astana: 766,674 (1 September 2012)                                             |
| Other Principal Cities (with population):      | Almaty: 1,464,380, Karaganda: 1,067,041                                        |
| Languages:                                     | Kazakh (official language),<br>Russian (language of interethnic communication) |
| Neighboring states:                            | China, Kyrgyzstan, Russia, Turkmenistan,<br>Uzbekistan.                        |
| Currency:                                      | Kazakhstan Tenge (KZT)                                                         |
| Exchange rate:                                 | KZT 150.02 = USD 1 (1 October 2012)                                            |
| NBK publish refinancing rate:<br>(August 2012) | 5.5%                                                                           |
| Foreign currency reserve<br>(September 2012)   | National Bank – USD 30,091,000,000<br>National Fund – USD 55,413,000,000       |
| Country rating:                                | S&P – BBB+<br>Moody's – Baa2<br>Fitch – BBB                                    |

***APPENDIX B***

***TAX RATES***

|                              |                                                         |
|------------------------------|---------------------------------------------------------|
| <b>CIT</b>                   | 20%                                                     |
| <b>Tax Depreciation</b>      | 10% - 40%                                               |
| <b>Withholding Tax</b>       | Dividends, interest and royalties – 15%, services – 20% |
| <b>Individual Income Tax</b> | 10%                                                     |
| <b>VAT</b>                   | 12%                                                     |
| <b>Property Tax</b>          | 1.5% of net book value of immovable assets              |

# Doing Business Guide dated 1 October 2012

## APPENDIX C

### WITHHOLDING TAXES

| Withholding Tax Rates Between Kazakhstan and Treaty Countries |             |          |           |
|---------------------------------------------------------------|-------------|----------|-----------|
| (The letters in parentheses refer to the notes below)         |             |          |           |
| Recipient                                                     | Dividends   | Interest | Royalties |
| Nontreaty                                                     | 15          | 15       | 15        |
| Treaty:                                                       |             |          |           |
| Armenia                                                       | 10          | 10       | 10        |
| Austria                                                       | 5/15 (4)    | 10       | 10        |
| Azerbaijan                                                    | 10          | 10       | 10        |
| Belarus                                                       | 15          | 10       | 15        |
| Belgium                                                       | 5/15 (5)    | 10       | 10        |
| Bulgaria                                                      | 10          | 10       | 10        |
| Canada                                                        | 5/15 (1)    | 10       | 10        |
| China                                                         | 10          | 10       | 10        |
| Czech Republic                                                | 10          | 10       | 10        |
| Estonia                                                       | 5/15 (2)    | 10       | 15        |
| Finland                                                       | 5/15 (1)    | 10       | 10        |
| France                                                        | 5/15 (10)   | 10       | 10        |
| Georgia                                                       | 15          | 10       | 10        |
| Germany                                                       | 5/15 (2)    | 10       | 10        |
| Hungary                                                       | 5/15 (9)    | 10       | 10        |
| India                                                         | 10          | 10       | 10        |
| Iran                                                          | 5/15 (6)    | 10       | 10        |
| Italy                                                         | 5/15 (5)    | 10       | 10        |
| Japan                                                         | 5/15 (1)    | 10       | 10        |
| Korea                                                         | 5/15 (1)    | 10       | 10        |
| Kyrgyzstan                                                    | 10          | 10       | 10        |
| Latvia                                                        | 5/15 (2)    | 10       | 10        |
| Lithuania                                                     | 5/15 (2)    | 10       | 10        |
| Malaysia                                                      | 10          | 10       | 10        |
| Moldova                                                       | 10/15 (2)   | 10       | 10        |
| Mongolia                                                      | 10          | 10       | 10        |
| The Netherlands                                               | 5/15 (5)    | 10       | 10        |
| Norway                                                        | 5/15 (12)   | 10       | 10        |
| Pakistan                                                      | 12,5/15 (8) | 12,5     | 15        |
| Poland                                                        | 10/15 (3)   | 10       | 10        |
| Romania                                                       | 10          | 10       | 10        |
| Russia                                                        | 10          | 10       | 10        |
| Singapore                                                     | 5/10 (13)   | 10       | 10        |
| Slovakia                                                      | 10/15 (7)   | 10       | 10        |
| Spain                                                         | 5/15 (4)    | 10       | 10        |
| Sweden                                                        | 5/15 (14)   | 10       | 10        |
| Switzerland                                                   | 5/15 (12)   | 10       | 10        |
| Tajikistan                                                    | 10/15 (7)   | 10       | 10        |
| Turkey                                                        | 10          | 10       | 10        |
| Turkmenistan                                                  | 10          | 10       | 10        |
| Ukraine                                                       | 5/15 (15)   | 10       | 10        |
| United Kingdom                                                | 5/15 (1)    | 10       | 10        |
| United States                                                 | 5/15 (16)   | 10       | 10        |
| Uzbekistan                                                    | 10          | 10       | 10        |

Notes referring to the table above:

1. 5% if the beneficial owner is a company which controls directly or indirectly at least 10% of the voting power in the company paying the dividends.
2. 5% if the beneficial owner is a company (other than partnership) which holds directly at least 25% of the capital of the company paying the dividends.
3. 10% if the beneficial owner is a company which directly or indirectly holds at least 20% of the capital of the company paying the dividends.
4. 5% if the beneficial owner is a company which holds directly at least 10% of the capital of the company paying the dividends.
5. 5% if the beneficial owner is a company which holds directly or indirectly at least 10% of the capital of the company paying the dividends.
6. 5% if the recipient is a company (excluding partnership) which holds directly at least 20% of the capital of the company paying the dividends.
7. 10% if the beneficial owner is a legal entity and directly holds not less than 30% stake in the company paying the dividends.
8. 12.5% if the beneficial owner is a company which holds directly or indirectly at least 10% of the capital of the company paying the dividends.
9. 5% if the beneficial owner is a company which holds directly or indirectly at least 25% of the capital of the company paying the dividends.
10. 5% if the beneficial owner is a company which owns directly at least 10% of the capital of the company paying the dividends.
11. 5% if the beneficial owner is a company (other than a partnership) which holds at least 10% of the capital of the company paying the dividends.
12. 5% if the beneficial owner is a company which holds directly at least 10% of the capital of the company paying the dividends.
13. 5% if the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends.

14. 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the voting power of the company paying the dividends.
15. 5% if the beneficial owner is a company and that company owns at least 25% of the capital of the company paying the dividends.
16. 5% if the beneficial owner is a company which owns at least 10% of the voting stock of the company paying the dividends.

**APPENDIX D**

**BRANCH VERSUS KAZAKHSTAN LEGAL ENTITY**

|                | <b>Branch of Foreign Legal Entity<br/>(the “FLE”)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>Kazakhstan Legal Entity<br/>(the “KLE”)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>General</b> | <ul style="list-style-type: none"><li>– A branch is not a separate legal entity, but rather an extension of its head office.</li><li>– A branch is permitted to carry out full commercial activities.</li><li>– A branch may not conclude a contract with its head office; thus direct transactions between a branch and its head office should not entail immediate tax and legal implications (e.g., funding is not treated as income).</li><li>– Any transactions are carried out by a branch on behalf of its head office.</li><li>– A branch has no charter capital or own property as a guarantee of its material responsibility, and, accordingly, it is the head office that is legally responsible for liabilities of its branch to third parties.</li></ul> | <ul style="list-style-type: none"><li>– KLE is a separate legal entity and is most commonly established either in the form of a limited liability partnership (the “LLP”) or a joint-stock company (the “JSC”).</li><li>– KLE is permitted to carry out full commercial activities.</li><li>– Transactions between a KLE and its parent organization require the use of a contract, invoices, or other supporting documentation and usually entail relevant tax and legal implications.</li><li>– KLE is an independent party to any transactions.</li><li>– KLE is legally responsible for its own liabilities to third parties. Shareholders of a KLE are generally responsible for the KLE’s liabilities within the respective limits of their contributions to a charter capital of the KLE (e.g. LLP or JSC).</li></ul> |

## Doing Business Guide dated 1 October 2012

|                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|--------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Registration/<br/>Liquidation</b> | <ul style="list-style-type: none"> <li>– Registration procedure and filing costs are similar for KLEs and branches of Foreign Legal Entities.</li> <li>– A branch may not open another branch or a representative office.</li> <li>– A branch may be liquidated upon the decision of its head office.</li> <li>– The provided term for state registration is 11 working days. In practice, registration may take longer.</li> </ul> | <ul style="list-style-type: none"> <li>– Registration procedure and filing costs are similar for KLEs and branches of FLEs.</li> <li>– KLE may open branches or representative offices.</li> <li>– KLE may be liquidated upon the decision of its shareholders, or upon the court's ruling in case of bankruptcy.</li> <li>– The provided term for state registration is 11 working days. In practice, registration may take longer.</li> </ul> |
| <b>Licensing</b>                     | <ul style="list-style-type: none"> <li>– Licensing restrictions may apply depending on the type of activity.</li> <li>– It might be more difficult, in practice, for a branch of FLE to obtain certain licenses.</li> <li>– Certain licenses are granted to branches of FLEs on a one-off basis (e.g., construction licenses are usually limited to a specific single project).</li> </ul>                                          | <ul style="list-style-type: none"> <li>– Licensing restrictions may apply depending on the type of activity.</li> <li>– It might be easier, in practice, for a KLE to obtain certain licenses.</li> <li>– KLEs are typically granted with a general license (i.e., not limited to a specific project).</li> </ul>                                                                                                                               |
| <b>Local content</b>                 | If there are local content requirements, a branch of FLE may not satisfy the criteria of the definition of “local content”.                                                                                                                                                                                                                                                                                                         | KLE might be advantageous for local content requirements depending on the evolution of local content rules and their interpretation by customers.                                                                                                                                                                                                                                                                                               |
| <b>Labor</b>                         | Full compliance required with the local labor legislation is required. It is unclear whether employment contracts may be denominated in currency other than KZT.                                                                                                                                                                                                                                                                    | Full compliance required with the local labor legislation is required. Employment contracts with Kazakhstan-based employees may be denominated only in KZT and salary payments to Kazakhstan-based employees may be made only in KZT as well.                                                                                                                                                                                                   |

|                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|---------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Work permit</i>              | <p>Full compliance is required. Note, the foreign head of a branch is not required to have a Kazakhstan work permit.</p>                                                                                                                                                                                                                                                                                                                                                       | <p>Full compliance is required. A Kazakhstan legal entity is subject to the requirement on obtainment of the permission on foreign labor force attraction, including the head of the company. The requirement on obtainment of permission is not applicable in relation to individuals, who reside on Kazakhstan territory not longer than 120 calendar days in a one year period.</p> <p>Individuals working as chief executives of organizations that entered into contracts with the Kazakhstan government for investment worth more than USD 50,000,000, or that are investing in priority sectors and that entered into contract with the designated authority responsible for investments do not require a Kazakhstan work permit.</p>                                                              |
| <i>Foreign currency control</i> | <p>A branch may operate in currency other than KZT:</p> <ul style="list-style-type: none"> <li>– Payments may be made in any currency as agreed by the parties to a transaction.</li> <li>– Salary payments to Kazakhstani employees must be made in local currency.</li> <li>– Contracts/agreements (including supply contracts, engagement letters, etc.) may be denominated in any currency although it is unclear whether this applies to employment contracts.</li> </ul> | <p>KLE should generally operate in local currency – the Kazakhstan Tenge:</p> <ul style="list-style-type: none"> <li>– Payments between KLEs are required to be carried out only in local currency. Payments between a KLE and a foreign legal entity (or branch thereof) may be made in any currency as agreed by the parties to a transaction.</li> <li>– Salary payments to local employees may be made only in local currency.</li> <li>– Contracts/agreements between KLEs (e.g., supply contracts with KLEs, engagement letters with KLEs, employment contracts with local employees, etc.) may be denominated only in KZT. Contracts/ agreements between a KLE and a foreign legal entity (or its branch) may be denominated in any currency as agreed by the parties to a transaction.</li> </ul> |

**Doing Business Guide dated 1 October 2012**

|                  |                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                       |
|------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                  | May have offshore bank accounts without mandatory notification of the National Bank.                                                                                                                                                                                                                                                      | The National Bank should be notified upon opening offshore bank accounts.                                                                                                                                                                                                                             |
|                  | Foreign currency control rules are much less restrictive.<br><br>A branch of a foreign legal entity that operates in Kazakhstan for more than one year is subject to “currency monitoring” (which is carried out merely for information purposes). National Bank determines types of activities which are subject to currency monitoring. | Full compliance requirements, including obtaining registration or notification certificates from the National Bank in respect of certain currency transactions.                                                                                                                                       |
|                  | There is no mandatory funds repatriation requirement for a branch of a foreign legal entity.                                                                                                                                                                                                                                              | There is a requirement for mandatory repatriation of foreign and national currency into its local bank account (i) received by a KLE for exports of goods, works or services; or (ii) paid by a KLE for importation of goods and services in case of their non-receipt/incomplete receipt by the KLE. |
|                  | The National Bank registers direct investments made by non-residents into Kazakhstan and by residents abroad.                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                       |
| <b>Financing</b> | May be funded by its parent company, where the funding is not treated as income.                                                                                                                                                                                                                                                          | May be funded by either contributions to charter capital or loans. Otherwise, the funding will be treated as the KLE’s income.                                                                                                                                                                        |

|                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                          | <p>Parent loans or funding are not subject to licensing / registration / notification with the National Bank and may not be deductible for Kazakhstan tax purposes unless it is a third party loan to the head office.</p>                                                                                                                                                                                                                                                                                                                         | <p>May be funded through contributions to the charter capital or loans. Otherwise, funding will be considered as profit of legal entity. Credits and loans (both in the form of credit (cash) and in the form of deferred payment/prepayment) between Kazakhstan legal entity and foreign legal entity on transaction that exceeds USD 500,000 (incoming transactions) and between Kazakhstan legal entity and foreign legal entity on the transaction that exceeds USD 100,000 (outgoing transactions) for a period of time that exceeds 180 days are required to be registered with the National Bank.</p> |
| <b>Interest Expenses</b> | <p>Payments of interest to related parties are subject to the thin-capitalization rules, irrespective of whether the other party is a non-resident or resident of the Republic of Kazakhstan. Branches, as a matter of practice, are funded by the parent company and interest accrued at such transactions is not deductible. Interest payments to a foreign entity are subject to 15% WHT and double tax treaty may be obtained to reduce this. If the foreign company is in a “black-listed” jurisdiction the WHT rate is increased to 20%.</p> | <p>Payments of interest to related parties are subject to the thin-capitalization rules, irrespective of whether the other party is a foreign non-resident or resident of the Republic of Kazakhstan. Percentage payments to any foreign legal entity are taxable at a 15% tax rate (the reduction of tax rate is possible with the presence of double tax treaty). If a foreign entity is in a “black-listed” jurisdiction, then the income tax should be raised to 20%, apart from the nature of payment.</p>                                                                                              |

|                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Profit Distribution</b> | Funds may be freely transferred to the parent company. Profit after tax of Branches should be taxed at 15% tax rate (in addition to 20% income tax). This tax obligation may be reduced to a 5% tax rate on the basis of double tax treaty. Branches are subject to this branch profits tax annually at indicated above rates, irrespective of whether the Branch distributes the profit to the parent company.                                                                                                                                                                                                                                                                     | Dividends can be paid from after tax profits (i.e., accumulated retained earnings, after payment of corporate income tax). Dividends can be exempt from withholding tax subject to a 3-year holding period for the shares. Otherwise, they would be subject to a 15% withholding tax, which may be reduced to 5% under most double tax treaties. Withholding tax to the extent applicable is due upon payment of dividends.                                                                                                                                                                                                                                                    |
| <b>Taxation</b>            | <p>Full taxpayer status.</p> <p>Exceptions (as compared to KLE):</p> <ul style="list-style-type: none"> <li>– Taxed on Kazakhstan-sourced income only.</li> <li>– Subject to branch profits tax, which is paid annually.</li> <li>– Deductions for overhead expenses of head office if located in a country that has concluded a double tax treaty with Kazakhstan. There should be no withholding tax or reverse-charge VAT consequences of head office overhead cost allocations (if properly structured).</li> <li>– Certain tax incentives are not available to branches of foreign legal entities (i.e., investment tax preferences, special economic zones, etc.).</li> </ul> | <p>Full taxpayer status.</p> <p>Exceptions (as compared to branch of FLE):</p> <ul style="list-style-type: none"> <li>– Taxed on world-wide income.</li> <li>– Subject to dividend withholding tax, which is paid upon actual distribution of dividends.</li> <li>– No automatic deductions for overhead expenses incurred by parent organization. Deduction may be possible with the use of a contract and invoices (amongst other supporting documentation); however, there could be withholding tax and reverse-charge VAT consequences.</li> <li>– Tax incentives should be available to KLEs (i.e., investment tax preferences, special economic zones, etc.).</li> </ul> |
| <b>Customs</b>             | <ul style="list-style-type: none"> <li>– The current Kazakhstan customs implications both for KLE and branches are similar. Representatives offices, branches and legal entities can import and perform customs clearance of the goods on behalf of themselves without the need to involve a broker.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

**APPENDIX E**

**DEFINED TERMS**

|                                    |                                               |
|------------------------------------|-----------------------------------------------|
| <b>“Accounting Law”</b>            | has the meaning given to it in Section 11.1;  |
| <b>“black-listed jurisdiction”</b> | has the meaning given to it in Section 12.11; |
| <b>“CFC”</b>                       | has the meaning given to it in Section 12.6;  |
| <b>“Chief Accountant”</b>          | has the meaning given to it in Section 11.1;  |
| <b>“CIS”</b>                       | has the meaning given to it in Section 1.2;   |
| <b>“CIT”</b>                       | has the meaning given to it in Section 12.3;  |
| <b>“Civil Code”</b>                | has the meaning given to it in Section 2.1;   |
| <b>“CU Legislation”</b>            | has the meaning given to it in Section 10.1;  |
| <b>“Currency Law”</b>              | has the meaning given to it in Section 4;     |
| <b>“DTT”</b>                       | has the meaning given to it in Section 14.1;  |
| <b>“FLE”</b>                       | has the meaning given to it in Appendix D;    |
| <b>“JSC”</b>                       | has the meaning given to it in Section 2.2;   |
| <b>“JSC Law”</b>                   | has the meaning given to it in Section 2.2;   |
| <b>“IIT”</b>                       | has the meaning given to it in Section 12.3;  |
| <b>“IPR”</b>                       | has the meaning given to it in Section 10.5;  |
| <b>“KASE”</b>                      | has the meaning given to it in Section 4;     |
| <b>“KLE”</b>                       | has the meaning given to it in Section 2.5;   |
| <b>“KZT”</b>                       | has the meaning given to it in Section 4;     |
| <b>“Labor Code”</b>                | has the meaning given to it in Section 6.1;   |

|                                                                    |                                               |
|--------------------------------------------------------------------|-----------------------------------------------|
| <b>“Land Code”</b>                                                 | has the meaning given to it in Section 8.1;   |
| <b>“Law on Banks”</b>                                              | has the meaning given to it in Section 5.1;   |
| <b>“Law on Competition”</b>                                        | has the meaning given to it in Section 9.1;   |
| <b>“Law on Investments”</b>                                        | has the meaning given to it in Section 3.1;   |
| <b>“Law on Natural Monopolies”</b>                                 | has the meaning given to it in Section 9.1;   |
| <b>“Law on Protection of Consumer Rights”</b>                      | has the meaning given to it in Section 9.4;   |
| <b>“Law on Securities’ Market”</b>                                 | has the meaning given to it in Section 5.2;   |
| <b>“Law on State Registration of Rights to Immovable Property”</b> | has the meaning given to it in Section 8.1;   |
| <b>“LLP”</b>                                                       | has the meaning given to it in Section 2.3;   |
| <b>“MCI”</b>                                                       | has the meaning given to it in Section 2.3;   |
| <b>“MMW”</b>                                                       | has the meaning given to it in Section 14.2;  |
| <b>“MPT”</b>                                                       | has the meaning given to it in Section 13.11; |
| <b>“NBK”</b>                                                       | has the meaning given to it in Section 4;     |
| <b>“PSAs”</b>                                                      | has the meaning given to it in Section 13.11; |
| <b>“Subsurface Use Law”</b>                                        | has the meaning given to it in Section 7.1;   |
| <b>“Tax Code”</b>                                                  | has the meaning given to it in Section 12.4;  |
| <b>“Transfer Pricing Law”</b>                                      | has the meaning given to it in Section 13.5;  |
| <b>“VAT”</b>                                                       | has the meaning given to it in Section 12.3.  |

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